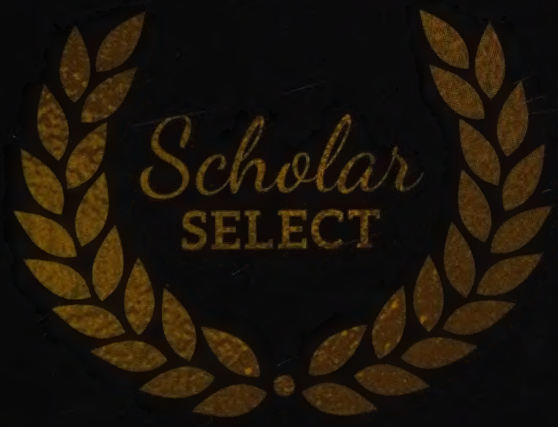
The Laws Of Alaska

Embracing The Penal Code, The Code Of Criminal Procedure, The Political Code, The Code Of Civil Procedure, And The Civil Code, With The Treaty Of Cession, And All Acts And Parts Of Acts Relating To The District, Annotated With



ALASKA, UNITED STATES, UNITED STATES. COURTS, OREGON. SUPREME COURT

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The Laws Of Alaska

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THE

LAWS OF ALASKA

EMBRACING

THE PENAL CODE, THE CODE OF CRIMINAL PROCEDURE, THE POLITICAL CODE, THE CODE OF CIVIL PROCEDURE, AND THE CIVIL CODE

WITH

THE TREATY OF CESSION, AND ALL ACTS AND PARTS OF ACTS RELATING TO THE DISTRICT

ANNOTATED WITH REFERENCES TO DECISIONS BY THE COURTS OF THE UNITED STATES AND THE SUPREME COURT OF OREGON

BY

THOMAS H. CARTER

OF MONTANA

CHICAGO
CALLAGHAN AND COMPANY
1907

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INTRODUCTION.

From the discovery by Behring in 1741 to its cession by Russia to the United States in 1867, the District of Alaska was known as Russian America. In 1799 the Russian American Fur Company, under sanction of the Emperor Paul, began to rule the country and thereafter exercised absolute control over it until 1862, when the Emperor declined to renew the charter of the company because of alleged abuses in connection with the management of its affairs. Thenceforth the company exercised control only by sufferance until the territory was ceded to the United States, when its authority ceased.

Aside from such temporary rules and regulations as the Russian Company may have thought proper to promulgate from time to time in furtherance of its commercial enterprises, the territory embraced in the District of Alaska was not made the subject of any legislative enactment until many years after its cession to the United States.

Although the treaty of cession was ratified and proclaimed on the 20th of June, 1867, Congress took no notice of Alaska until 1872. By the act approved on March 5 of that year, the customs laws were extended over it, and authority was given the Secretary of the Treasury to lease the Islands of St. Paul and St. George for seal-killing purposes, etc. By this act jurisdiction was conferred on the courts of the United States for California, Oregon and Washington, but no provision was made for a civil government for the district. On May 17, 1884, just seventeen years, less thirty-four days, after the treaty of cession was ratified, an act entitled "An Act providing a civil government for Alaska" was approved. Section 7 of the act provided "That the general laws of the State of Oregon now in force are hereby declared to be the law in said district so far as the same may be applicable, and not in conflict with the provisions of this act, or the laws of the United States."

Inasmuch as the laws of Oregon had not been compiled for many years prior to 1884, it was something of a task to determine what the law of that state was on the day the act of Congress was approved, and a task more difficult still to ascertain with precision how far a given law of the state was applicable to the unique Alaskan conditions and not in conflict with any law of the United States. The resulting doubts embarrassed the courts and the bar and sorely perplexed the people.

Such, however, was the state of the law in Alaska for the ensuing fifteen years. In 1898 Congress became deeply impressed with the growing importance of Alaska and thoroughly conscious of its duty to that long-neglected part of our possessions. The result was the passage of an act entitled "An Act extending the homestead laws and providing for right of way for railroads in the District of Alaska, and for other purposes," approved May 14, 1898. Also an act entitled "An Act to punish crimes in the District of Alaska and to provide a code of criminal procedure for said district," approved March 3, 1899; and finally an act entitled "An Act making further provision for a civil government for Alaska, and for other purposes," approved June 6, 1900.

The two acts last named embrace a criminal code, a code of criminal procedure, a political code, a code of civil procedure, a civil code, and certain license taxes for the district. The codes were mainly copied from the statutes of the State of Oregon, and to the end that adjudications by the Supreme Court of that state might remain as directly in point as possible, changes were sparingly made in the text of sections.

It is believed that the political code provides a system of government capable of prompt adjustment to varying conditions and at the same time insuring a vigorous administration of the law. In the nature of things some features of the system are destined to be but temporary. The present fair promise of the rapid and substantial development of the great material resources of the district warrants faith in the early establishment of permanent centers of population throughout the interior and their connection by regular mail, passenger, freight and telegraph lines. Popular elections being thus facilitated will soon follow, with the logical privilege of representation through a delegate in Congress and self-government through a legislature subject to congressional control. In the meantime the district has been provided by Congress with a system of statutory law more elaborate than has heretofore been enacted for any partially organized territory of the United States.

Obvious convenience, if not actual necessity, seems to require that the laws of the district should be annotated and compiled for ready reference. In this impression rests the justification for the publication of this volume. A satisfactory arrangement of the subject-matter has been rendered difficult by the duplication of titles, chapters and sections in the acts of Congress passed at different sessions. To avoid confusion, the titles have been denominated "Parts" and thus numbered consecutively from one to five, and the pages run in regular order from first to last. The codes make up the body of the work, but as certain acts of Congress antedating the last code passed may be only re-

pealed in part, while other acts, though wholly repealed, may still be useful as showing what the law was at any given time in the past, all acts and parts of acts of Congress relating to Alaska, other than the codes, are placed in the appendix.

The utmost vigilance has been exercised to insure an accurate reproduction of the text of the enrolled acts. In some few instances, obvious errors are found in the acts as enrolled, and in such cases, while their exact language has been here preserved, corrections are suggested by the insertion of the proper words in parenthesis.

As the fees of officers and others not specifically fixed by law are to be determined for each division of the court by the Attorney-General, recourse must be had to the bill of fees and allowances promulgated by him for complete information on that subject.

The bill comprising the political code, the code of civil procedure and the civil code was passed on the 6th of June, 1900. It was the commendable desire of the publishers to place the book at the disposal of the bench and bar at the earliest practicable date. This controlled the order in which the contents are presented, though the fact did not escape recognition that it would have been a more logical arrangement to place the political code first. It further involved haste in the preparation of the text, notes and index; and the indulgent judgment of the profession is solicited for any imperfections that may have resulted.

THOMAS H. CARTER.

June 30, 1900.

DECLARATION OF INDEPENDENCE

IN CONGRESS JULY 4, 1776.

THE UNANIMOUS DECLARATION OF THE THIRTEEN UNITED STATES OF AMERICA.

When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness. Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience hath shewn, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security. Such has been the patient sufferance of these Colonies; and such is now the necessity which constrains them to alter their former Systems of Government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States. To prove this, let Facts be submitted to a candid world.

He has refused his Assent to Laws, the most wholesome and necessary for the public good.

He has forbidden his Governors to pass Laws of immediate and pressing importance, unless suspended in their operation till his Assent should be obtained; and when so suspended, he has utterly neglected to attend to them.

He has refused to pass other Laws for the accommodation of large districts of people, unless those people would relinquish the right of Representation in the Legislature, a right inestimable to them and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their public Records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved Representative Houses repeatedly, for opposing with manly firmness his invasions on the rights of the people.

He has refused for a long time, after such dissolutions, to cause others to

be elected; whereby the Legislative powers, incapable of Annihilation, have returned to the People at large for their exercise; the State remaining in the meantime exposed to all the dangers of invasion from without, and convulsions within.

He has endeavored to prevent the population of these States; for that purpose obstructing the Laws for Naturalization of Foreigners; refusing to pass others to encourage their migrations hither, and raising the conditions of new Appropriations of Lands.

He has obstructed the Administration of Justice, by refusing his Assent to Laws for establishing Judiciary Powers.

He has made Judges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of New Offices, and sent hither swarms of Officers to harrass our people, and eat out their substance.

He has kept among us, in times of peace, Standing Armies without the Consent of our legislature.

He has affected to render the Military independent of and superior to the Civil power.

He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his Assent to their Acts of pretended Legislation:

For quartering large bodies of armed troops among us:

For protecting them, by a mock Trial, from punishment for any Murders which they should commit on the Inhabitants of these States:

For cutting off our Trade with all parts of the world:

For imposing Taxes on us without our Consent:

For depriving us in many cases, of the benefits of Trial by jury:

For transporting us beyond Seas to be tried for pretended offenses:

For abolishing the free System of English Laws in a neighboring Province, establishing therein an Arbitrary government, and enlarging its Boundaries so as to render it at once an example and fit instrument for introducing the same absolute rule into these Colonies:

For taking away our Charters, abolishing our most valuable Laws, and altering fundamentally the Forms of our Governments:

For suspending our own Legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

He has abdicated Government here, by declaring us out of his Protection and waging War against us.

He has plundered our seas, ravaged our Coasts, burnt our towns, and destroyed the lives of our people.

He is at this time transporting large Armies of foreign Mercenaries to compleat the works of death, desolation and tyranny, already begun with circumstances of Cruelty & perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the Head of a civilized nation.

He has constrained our fellow-Citizens taken Captive on the high Seas to bear Arms against their Country, to become the executioners of their friends and Brethren, or to fall themselves by their Hands.

He has excited domestic insurrections amongst us, and has endeavored to bring on the inhabitants of our frontiers, the merciless Indian Savages, whose known rule of warfare, is an undistinguished destruction of all ages, sexes and conditions.

In every stage of these Oppressions We have Petitioned for Redress in the most humble terms: Our repeated Petitions have been answered only by repeated injury. A Prince, whose character is thus marked by every act which may define a Tyrant, is unfit to be the ruler of a free people.

Nor have We been wanting in attentions to our British brethren. We have warned them from time to time of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them by the ties of our common kindred to disavow these usurpations, which, would inevitably interrupt our connections and correspondence. They too have been deaf to the voice of justice and of consanguinity. We must, therefore, acquiesce in the necessity, which denounces our Separation, and hold them, as we hold the rest of mankind, Enemies in War, in Peace Friends.

WE, THEREFORE, the Representatives of the United States of America, in General Congress, Assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the Name, and by authority of the good People of these Colonies, solemnly Publish and Declare, That these United Colonies are, and of Right ought to be Free and Independent States; that they are Absolved from all Allegiance to the British Crown, and that all political connection between them and the State of Great Britain, is and ought to be totally dissolved; and that as Free and Independent States, they have full Power to levy War, conclude Peace, contract Alliances, establish Commerce, and to do all other Acts and Things which Independent States may of right do. And for the support of this Declaration, with a firm reliance on the protection of Divine Providence, We mutually pledge to each other our Lives, our Fortunes and our sacred Honor.

(The foregoing declaration was, by order of Congress, engrossed, and signed by the following members):

JOHN HANCOCK.

NEW HAMPSHIRE.

Josiah Bartlett,
Wm. Whipple,
Matthew Thornton.

MASSACHUSETTS BAY.

Saml. Adams,
Robt. Treat Paine,
John Adams,
Elbridge Gerry.

RHODE ISLAND, ETC.

Step. Hopkins,
William Ellery.

CONNECTICUT.

Roger Sherman,
Sam'el Huntington,
Wm. Williams,
Oliver Wolcott.

NEW YORK.

Wm. Floyd,
Phil. Livingston,
Frans. Lewis,
Lewis Morris.

NEW JERSEY.

Richd. Stockton,
Jno. Witherspoon,
Fras. Hopkinson,
John Hart,
Abra. Clark.

PENNSYLVANIA.

Robt. Morris,
Benjamin Rush,
Benja. Franklin,
John Morton,
Geo. Clymer,
Jas. Smith,
Geo. Taylor,
James Wilson,
Geo. Ross.

DELAWARE.

Cesar Rodney,
Geo. Read,
Tho. M'Kean.

MARYLAND.

Samuel Chase,
Wm. Paca,
Thos. Stone,
Charles Carroll of Carrollton.

VIRGINIA.

George Wythe,
Richard Henry Lee,
Th Jefferson,
Benja. Harrison,
Thos. Nelson, jr.,
Francis Lightfoot Lee,
Carter Braxton.

NORTH CAROLINA.

Wm. Hooper,
Joseph Hewes,
John Penn.

SOUTH CAROLINA.

Edward Rutledge,
Thos. Heyward, junr.,
Thomas Lynch, junr.,
Arthur Middleton.

GEORGIA.

Button Gwinnett,
Lyman Hall,
Geo. Walton.

Resolved, That copies of the Declaration be sent to the several assemblies, conventions, and committees or councils of safety, and to the several commanding officers of the Continental Troops: That it be Proclaimed in each of the United States, and at the Head of the Army.—[Jour. Cong., vol. 1, p. 396.]

THE CONSTITUTION OF THE UNITED STATES OF AMERICA.

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

ARTICLE I.

Section. 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section. 2. The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

No Person shall be a Representative who shall not have attained to the Age of twenty-five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

[Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons.] The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

The House of Representatives shall chuse their Speaker and other officers; and shall have the sole Power of Impeachment.

Section. 3. The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years; and each Senator shall have one Vote.

Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one-third

may be chosen every second Year; and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.

No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

The Senate shall chuse their other Officers, and also a President pro tempore, in the absence of the Vice President, or when he shall exercise the Office of President of the United States.

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.

Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

Section. 4. The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December, unless they shall by Law appoint a different Day.

Section. 5. Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behavior, and, with the Concurrence of two thirds, expel a Member.

Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal.

Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

Section. 6. The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United

States, which shall have been created, or the Emoluments whereof shall have been encreased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

Section. 7. All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

Section 8. The Congress shall have Power to lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

To borrow Money on the credit of the United States;

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

To establish Post Offices and post Roads;

To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

To constitute Tribunals inferior to the supreme Court;

To define and punish Piracies and Felonies committed on the high Seas, and Offenses against the Law of Nations;

To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

To provide and maintain a Navy;

To make Rules for the Government and Regulation of the land and naval Forces;

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

To provide for organizing, arming, and disciplining the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;—And

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Section 9. The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

No Bill of Attainder or ex post facto Law shall be passed.

No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.

No Tax or Duty shall be laid on Articles exported from any State.

No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

Section 10. No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing it's inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress.

No State shall, without the Consent of Congress, lay any duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or

Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

ARTICLE II.

Section 1. The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice-President, chosen for the same Term, be elected, as follows

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

*[The Electors shall meet in their respective States, and vote by Ballot for two persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List the said House shall in like Manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having one Vote; A quorum for this Purpose shall consist of a Member or Members from two-thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice-President.]

The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

No person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty-five Years, and been fourteen Years a Resident within the United States.

In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.

The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be encreased nor diminished during the Period for

* This clause has been superseded by the twelfth amendment, post.

which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation:—"I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."

Section 2. The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offenses against the United States, except in Cases of Impeachment.

He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two-thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

Section 3. He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

Section 4. The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

ARTICLE III.

Section 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services a Compensation which shall not be diminished during their Continuance in Office.

Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases Affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States,—between Citizens of the same State claiming Lands under Grants of

different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

Section 3. Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

The Congress shall have power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

ARTICLE IV.

Section 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

Section 2. The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

No Person held to Service or Labor in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labor, but shall be delivered up on Claim of the Party to whom such Service or labor may be due.

Section 3. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

Section 4. The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

ARTICLE V.

The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two-thirds of the several States, shall call a Convention

for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as part of this Constitution, when ratified by the Legislatures of three-fourths of the several States, or by Conventions in three-fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of it's equal Suffrage in the Senate.

ARTICLE VI.

All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

ARTICLE VII.

The Ratification of the Conventions of nine States shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.

Done in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and eighty seven and of the Independence of the United States of America the Twelfth. In Witness whereof We have hereunto subscribed our Names,

Go. WASHINGTON—
Presidt and deputy from Virginia

NEW HAMPSHIRE.
John Langdon,
Nicholas Gilman.

MASSACHUSETTS.
Nathaniel Gorham,
Rufus King.

CONNECTICUT.
Wm Saml Johnson,
Roger Sherman.

NEW YORK.
Alexander Hamilton.

NEW JERSEY.
Wil: Livingston,
David Brearley,
Wm Patterson,
Jona: Dayton.

PENNSYLVANIA.
B. Franklin.
Robt. Morris,
Thos. Fitzsimons,
James Wilson,
Thomas Mifflin,
Geo. Clymer,
Jared Ingersoll,
Gouv Morris,

DELAWARE.
Geo: Read,
John Dickinson,
Jaco: Broom,
Gunning Bedford jun,
Richard Bassett.

MARYLAND.
James McHenry
Danl Carroll,
Dan: of St Thos Jenifer.

VIRGINIA.
John Blair—
James Madison Jr.

NORTH CAROLINA.
Wm Blount,
Hu Williamson,
Richd Dobbs Spaight.

SOUTH CAROLINA.
J. Rutledge,
Charles Pinckney,
Charles Cotesworth Pinckney,
Pierce Butler.

GEORGIA.
William Few,
Abr. Baldwin.

Attest: WILLIAM JACKSON, Secretary.

Articles in Addition To, and Amendment Of, the Constitution of the United States of America, Proposed by Congress, and Ratified by the Legislatures of the Several States, Pursuant to the Fifth Article of the Original Constitution.

[ARTICLE I.]

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

[ARTICLE II.]

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

[ARTICLE III.]

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

[ARTICLE IV.]

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrant shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

[ARTICLE V.]

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived

of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

[ARTICLE VI.]

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

[ARTICLE VII.]

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

[ARTICLE VIII.]

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

[ARTICLE IX.]

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

[ARTICLE X.]

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

ARTICLE XI.

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

ARTICLE XII.

The Electors shall meet in their respective states and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;—The President of the Senate shall, in presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;—The person having the greatest number of votes for President,

shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the person having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President.—The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

ARTICLE XIII.

Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2. Congress shall have power to enforce this article by appropriate legislation.

ARTICLE XIV.

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort

to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

ARTICLE XV.

Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude—

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

THE TREATY OF CESSION.

Convention between the United States of America and His Majesty the Emperor of Russia, for the cession of the Russian Possessions in North America to the United States, concluded at Washington March 30, 1867; Ratification advised by Senate April 9, 1867; ratified by President May 28, 1867; Ratifications exchanged at Washington June 20, 1867; Proclaimed June 20, 1867.

Contracting parties. The United States of America and His Majesty the Emperor of all the Russias, being desirous of strengthening, if possible, the good understanding which exists between them, have, for that purpose, appointed as their Plenipotentiaries, the President of the United States, William H. Seward, Secretary of State; and His Majesty the Emperor of all the Russias, the Privy Counsellor Edward de Stoeckl, his Envoy Extraordinary and Minister Plenipotentiary to the United States;

And the said Plenipotentiaries, having exchanged their full powers, which were found to be in due form, have agreed upon and signed the following articles:

ARTICLE I.

Cession of territory and dominion. His Majesty the Emperor of all the Russias agrees to cede to the United States, by this convention, immediately upon the exchange of the ratifications thereof, all the territory and dominion now possessed by his said Majesty on the continent of America and in the adjacent islands, the same being contained within the geographical limits herein set forth, to wit:

Boundaries of ceded territory. The eastern limit is the line of demarcation between the Russian and the British possessions in North America, as established by the convention between Russia and Great Britain, of February 28-16, 1825, and described in Articles III and IV of said convention, in the following terms:

"Commencing from the southernmost point of the island called Prince of Wales Island, which point lies in the parallel of 54 degrees 40 minutes north latitude, and between the 131st and 133d degree of west longitude, (meridian of Greenwich,) the said line shall ascend to the north along the channel called Portland Channel, as far as the point of the continent where it strikes the 56th degree of north latitude; from this last-mentioned point, the line of demarcation shall follow the summit of the mountains situated parallel to the coast, as far as the point of intersection of the 141st degree of west longitude, (of the same meridian;) and finally, from the said point of intersection, the said meridian line of the 141st degree, in its prolongation as far as the Frozen Ocean.

"IV. With reference to the line of demarcation laid down in the preceding article, it is understood—

"1st. That the island called Prince of Wales Island shall belong wholly to Russia," (now, by this cession to the United States.)

"2nd. That whenever the summit of the mountains which extend in a direction parallel to the coast from the 56th degree of north latitude to the point of intersection of the 141st degree of west longitude shall prove to

be at the distance of more than ten marine leagues from the ocean, the limit between the British possessions and the line of coast which is to belong to Russia as above mentioned, (that is to say, the limit to the possessions ceded by this convention,) shall be formed by a line parallel to the winding of the coast, and which shall never exceed the distance of ten marine leagues therefrom."

The western limit within which the territories and dominion conveyed are contained passes through a point in Behring's Straits on the parallel of sixty-five degrees thirty minutes north latitude, at its intersection by the meridian which passes midway between the islands of Krusenstern or Ingalook, and the island of Ratmanoff, or Noonarbook, and proceeds due north without limitation, into the same Frozen Ocean. The same western limit, beginning at the same initial point, proceeds thence in a course nearly southwest, through Behring's Straits and Behring's Sea, so as to pass midway between the northwest point of the island of St. Lawrence and the southeast point of Cape Choukotski, to the meridian of one hundred and seventy-two west longitude; thence, from the intersection of that meridian, in a southwesterly direction, so as to pass midway between the island of Attou and the Copper Island of the Kormandorski couplet or group, in the North Pacific Ocean, to the meridian of one hundred and ninety-three degrees west longitude, so as to include in the territory conveyed the whole of the Aleutian Islands east of that meridian.

ARTICLE II.

Property included in cession. In the cession of territory and dominion made by the preceding article are included the right of property in all public lots and squares, vacant lands, and all public buildings, fortifications, barracks, and other edifices which are not private individual property. It is, however, understood and agreed, that the churches which have been built in the ceded territory by the Russian Government, shall remain the property of such members of the Greek Oriental Church resident in the territory as may choose to worship therein. Any Government archives, papers, and documents relative to the territory and dominion aforesaid, which may now be existing there, will be left in the possession of the agent of the United States; but an authenticated copy of such of them as may be required, will be, at all times, given by the United States to the Russian Government, or to such Russian officers or subjects as they may apply for.

ARTICLE III.

Rights of inhabitants in ceded territory. The inhabitants of the ceded territory, according to their choice, reserving their natural allegiance, may return to Russia within three years; but if they should prefer to remain in the ceded territory, they, with the exception of uncivilized native tribes, shall be admitted to the enjoyment of all the rights, advantages, and immunities of citizens of the United States, and shall be maintained and protected in the free enjoyment of their liberty, property, and religion. The uncivilized tribes will be subject to such laws and regulations as the United States may from time to time adopt in regard to aboriginal tribes of that country.

ARTICLE IV.

Delivery of ceded property. His Majesty, the Emperor of all the Russias, shall appoint, with convenient despatch, an agent or agents for the purpose

of formally delivering to a similar agent or agents, appointed on behalf of the United States, the territory, dominion, property, dependencies, and appurtenances which are ceded as above, and for doing any other act which may be necessary in regard thereto. But the cession, with the right of immediate possession, is nevertheless to be deemed complete and absolute on the exchange of ratifications, without waiting for such formal delivery.

ARTICLE V.

Delivery of military posts. Immediately after the exchange of the ratifications of this convention, any fortifications or military posts which may be in the ceded territory shall be delivered to the agent of the United States, and any Russian troops which may be in the territory shall be withdrawn as soon as may be reasonably and conveniently practicable.

ARTICLE VI.

Sum to be paid by United States. In consideration of the cession aforesaid, the United States agree to pay at the Treasury in Washington, within ten months after the exchange of the ratifications of this convention, to the diplomatic representative or other agent of His Majesty the Emperor of all the Russias, duly authorized to receive the same, seven million two hundred thousand dollars in gold. The cession of territory and dominion herein made is hereby declared to be free and unincumbered by any reservations, privileges, franchises, grants, or possessions, by any associated companies, whether corporate or incorporate, Russian or any other, or by any parties, except merely private individual property holders; and the cession hereby made conveys all the rights, franchises, and privileges now belonging to Russia in the said territory or dominion, and appurtenances thereto.

ARTICLE VII.

Ratifications. When this convention shall have been duly ratified by the President of the United States, by and with the advice and consent of the Senate, on the one part, and, on the other, by His Majesty the Emperor of all the Russias, the ratifications shall be exchanged at Washington within three months from the date hereof, or sooner if possible.

In faith whereof the respective Plenipotentiaries have signed this convention, and thereto affixed the seals of their arms.

Done at Washington the thirtieth day of March, in the year of our Lord one thousand eight hundred and sixty-seven.

WILLIAM H. SEWARD. (L. S.)
EDOUARD DE STOECKL. (L. S.)

THE LAWS OF ALASKA.

PART ONE.

THE PENAL CODE.

MARCH 3, 1899.

CHAP. 429.—An Act to define and punish crimes in the District of Alaska and to provide a code of criminal procedure for said District.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the penal and criminal laws of the United States of America and the procedure thereunder relating to the District of Alaska shall be as follows:

TITLE I.

CHAPTER ONE.

GENERAL PROVISIONS.

Sec.
1. Territorial area.
Sec.
2. Crimes and offenses, how punished.

Sec. 1. **Territorial area.** That the District of Alaska consists of that portion of the territory of the United States ceded by Russia by the treaty of March thirtieth, eighteen hundred and sixty-seven.

23 Stat. L., 24, R. S., 1878, ss. 1954-1976. Treaty, 15 Stat. L., 240.

Sec. 2. **Crimes and offenses, how punished.** That the crimes and offenses defined in this Act, committed within the District of Alaska, shall be punished as herein provided.

23 Stat. L., 24, s. 7. 1 Supp., p. 432.

CHAPTER TWO.

OFFENSES AGAINST THE PERSON.

Sec.
3. Murder, first degree.
4. Murder, by obstructing or injuring a railroad.
5. Murder in the second degree.
6. Manslaughter.
7. Procuring another to commit self-murder.
8. Administering medicine, etc., to pregnant women.
9. Physicians administering poison, etc., while in a state of intoxication.
10. Negligent homicide.
11. When killing of a human being justifiable.
12. Same subject.
13. When killing of a human being excusable.
14. Rape.
15. Punishment for rape.
16. Mayhem.
17. Shooting, cutting, or stabbing with intent to kill, etc.
18. Assault with intent to kill or commit rape or robbery.
19. Dueling.
20. Posting another for not engaging in duel.
21. Assault, being armed with a cowhide.
22. Pointing firearms at and discharging the same and injuring thereby.
23. Administering poison.
24. Assault with a dangerous weapon.
25. Assault or assault and battery.
26. Robbery, pocket picking.
27. Kidnaping.
28. Child stealing.
29. Blackmailing.
30. Libel.

Sec. 3. **Murder, first degree.** That whoever, being of sound memory and discretion, purposely, and either of deliberate and premeditated malice or by means of poison, or in perpetrating or in attempting to perpetrate, any rape, arson, robbery, or burglary, kills another, is guilty of murder in the first degree, and shall suffer death.

Bate's Ann. Ohio Stat., s. 6808. Rufner v. State, 25 Ohio St., 468; Kahn v. State, 8 Ibid., 306; Shoemaker v. State, 12 Ohio, 43.

Sec. 4. **Murder by obstructing or injuring a railroad.** That whoever maliciously places an obstruction upon a railroad or street railroad or displaces or injures anything appertaining thereto or does any other act with intent to endanger the passage of any locomotive or car and thereby occasions the death of another, is guilty of murder in the first degree, and shall suffer death. That in all cases where the accused is found guilty of the crime of murder under this and the next preceding section, the jury may qualify their verdict by adding thereto "without capital punishment;" and whenever the jury shall return a verdict qualified as aforesaid the person convicted shall be sentenced to imprisonment at hard labor for life.

Bate's Ann. Ohio Stat., s. 6809; Jones v. State, 51 Ohio St., 531-541.

Sec. 5. **Murder in the second degree.** That whoever purposely and maliciously, except as provided in the last two sections, kills another, is guilty of murder in the second degree, and shall be imprisoned in the penitentiary not less than fifteen years.

Bate's Ann. Ohio Stat., s. 6810; Davis v. State, 25 Ohio St., 269; Silvus v. State, 22 Ibid., 90; Weaver v. State, 24 Ibid., 584; Erwin v. State, 29 Ibid., 186; Stewart v. State, 1 Ibid., 66.

Sec. 6. **Manslaughter.** That whoever unlawfully kills another, except as provided in the last three sections, is guilty of manslaughter, and shall be imprisoned in the penitentiary not more than twenty nor less than one year.

Bate's Ann. Ohio Stat., s. 6811; Montgomery v. State, 11 Ohio, 424; Erwin v. State, 29 Ohio St., 186; Sutcliffey v. State, 18 Ohio, 469.

Sec. 7. **Procuring another to commit self-murder.** That if any person shall purposely and deliberately procure another to commit self-murder or assist

another in the commission thereof, such person shall be deemed guilty of manslaughter, and shall be punished accordingly.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1720.

Sec. 8. **Administering medicine, etc., to pregnant women.** That if any person shall administer to any woman pregnant with a child any medicine, drug, or substance whatever, or shall use any instrument or other means, with intent thereby to destroy such child, unless the same shall be necessary to preserve the life of such mother, such person shall, in case the death of such child or mother be thereby produced, be deemed guilty of manslaughter, and shall be punished accordingly.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1721; State v. Glass, 5 Oreg., 73; State v. Clements, 15 Ibid., 247.

Sec. 9. **Physicians administering poison, etc., while in a state of intoxication.** That if any physician, or any person acting as or pretending to be a physician, while in a state of intoxication, shall, without a design to effect death, administer any poison, drug, or medicine, or do any other act to another person which shall produce the death of such other, such physician shall be deemed guilty of manslaughter, and shall be punished accordingly.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1722.

Sec. 10. **Negligent homicide.** That every killing of a human being by the culpable negligence of another, when such killing is not murder in the first or second degree, or is not justifiable or excusable, shall be deemed manslaughter, and shall be punished accordingly.

Laws Oreg., Oct 19, 1864; Hill's Ann. Laws, s. 1723.

Sec. 11. **When killing of a human being justifiable.** That the killing of a human being is justifiable, when committed by public officers or those acting in their aid and assistance and by their command, either—

First. In obedience to the judgment of a competent court;

Second. When necessarily committed in overcoming resistance to the execution of legal process or to the discharge of a legal duty;

Third. When necessarily committed in retaking persons charged with or convicted of crime who have escaped or been rescued; or

Fourth, When necessarily committed in arresting a person fleeing from justice who has committed a felony.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1729.

Sec. 12. **Same subject.** That the killing of a human being is also justifiable when committed by any person as follows:

First. To prevent the commission of a felony upon such person or upon his or her husband, wife, parent, child, master, mistress, or servant;

Second. To prevent the commission of a felony upon the property of such person, or upon property in his possession, or upon or in any dwelling house where such person may be;

Third. In the attempt, by lawful ways and means, to arrest a person who has committed a felony, or in the lawful attempt to suppress a riot or preserve the peace.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1730; State v. Dodson, 4 Oreg., 64; Goodall v. State, 1 Ibid., 335; State v. Tartar, 26 Ibid., 38.

Sec. 13. **When killing of a human being excusable.** That the killing of a human being is excusable when committed:

First. By accident or misfortune in lawfully correcting a child, or in doing any other lawful act, by lawful means, with usual, and ordinary caution and without any unlawful intent; or,

Second. By accident or misfortune in the heat of passion, upon a sudden and sufficient provocation, or upon a sudden combat, without premeditation or undue advantage being taken, and without any dangerous weapon or thing being used, and not done in a cruel or unusual manner.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1731; U. S. v. Holmes, 1 Wall, Jr., 1.

Sec. 14. **Rape.** That whoever has carnal knowledge of a female person, forcibly and against her will, or, being sixteen years of age, carnally knows and abuses a female person under sixteen years of age, with her consent, is guilty of rape.

Bate's Ann. Ohio Stat., s. 6816; McCoombs v. State, 8 Ohio St., 643; Pratt v. State, 19 Ibid., 277; Burt v. State, 23 Ibid., 394; Hornbeck v. State, 35 Ibid., 277.

Sec. 15. **Punishment for rape.** That a person convicted of rape upon his daughter, or sister, or a female person under twelve years of age, shall be imprisoned in the penitentiary during life; and a person convicted of rape upon any other female person shall be imprisoned in the penitentiary not more than twenty years nor less than three years.

Bate's Ann. Ohio Stat., s. 6817; Howard v. State, 11 Ohio St., 328.

Sec. 16. **Mayhem.** That whoever, with malicious intent to maim or disfigure, cuts, bites, or slits the nose, ear, or lip, cuts out or disables the tongue, puts out or destroys an eye, cuts off or disables a limb or any member of another person, or whoever with like intent, throws or pours upon or throws at another person, any scalding hot water, vitriol, or other corrosive acid or caustic substance, or whoever, with like intent, assaults another person with any dangerous instrument whatever, shall be imprisoned in the penitentiary not more than twenty years nor less than one year.

Bate's Ann. Ohio Stat., s. 6819.

Sec. 17. **Shooting, cutting, or stabbing with intent to kill, etc.** That whoever maliciously shoots, stabs, cuts, or shoots at another person, with intent to kill, wound, or maim such person, shall be imprisoned in the penitentiary not more than twenty years nor less than one year.

Bate's Ann. Ohio Stat., s. 6820; Callahan v. State, 21 Ohio St., 306; Wareham v. State, 25 Ibid., 601; Barber v. State, 39 Ibid., 660; Henry v. State, 13 Ohio, 32.

Sec. 18. **Assault with intent to kill, or commit rape or robbery.** That whoever assaults another with intent to kill, or to commit rape or robbery upon the person so assaulted, shall be imprisoned in the penitentiary not more than fifteen years nor less than one year.

Bate's Ann. Ohio Stat., s. 6821; Smith v. State, 12 Ohio St., 466; Callahan v. State, 21 Ibid., 306; Matthews v. State, 4 Ibid., 539; State v. Stout, 49 Ibid., 270; Fox v. State, 34 Ibid., 377-380.

Sec. 19. **Dueling.** That whoever fights a duel, or is second to a person who fights a duel, or challenges another to fight a duel, or accepts a challenge to fight a duel, or is knowingly the bearer of such challenge, or shall be present at the fighting of such duel as aid or surgeon, or shall advise, encourage, or promote such duel, shall be imprisoned in the penitentiary not more than ten years nor less than one year.

Bate's Ann. Ohio Stat., s. 6887.

Sec. 20. **Posting another for not engaging in duel.** That whoever shall in any manner post another, or in writing or print use any reproachful or contemptuous language to or concerning another for not fighting a duel, or for not sending or accepting a challenge to fight a duel, shall be imprisoned in the penitentiary not more than two years nor less than one year.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1738.

Sec. 21. **Assault, being armed with a cowhide.** That whoever shall assault, or assault and beat another with a cowhide, whip, stick, or like thing, having at the time in his possession a pistol, dirk, or other deadly weapon, with intent to intimidate and prevent such other from resisting or defending himself, shall be punished by imprisonment in the penitentiary not more than ten years nor less than one year.

Laws Oreg. Oct. 19, 1864; Hill's Ann. Laws, s. 1739.

Sec. 22. **Pointing firearms at, and discharging the same, and injury thereby.** That whoever intentionally, and without malice, points or aims any firearm at or toward any person, or discharges any firearm so pointed or aimed, or maims or injures any person by the discharge of any firearm so pointed or aimed, shall be fined not more than one hundred dollars, or imprisoned not more than one year, or both. This section shall not extend to any case where firearms are used in self-defense or in the discharge of official duty, or in case of justifiable homicide.

Bate's Ann. Ohio Stat., s. 6822; Geiger v. State, 5 Ohio C. C., 283; Williamson v. State, 2 Ibid., 292.

Sec. 23. **Administering poison.** That whoever administers poison to a person, with intent to kill or injure such person, or mingles poison with food, drink, or medicine, with intent to kill or injure any human being, or willfully poisons any well, spring, cistern, or reservoir of water, shall be imprisoned in the penitentiary not more than fifteen years nor less than two years.

Bate's Ann. Ohio Stat., s. 6812; Blackburn v. State, 23 Ohio St., 146; Robbins v. State, 8 Ibid., 131.

Sec. 24. **Assault with a dangerous weapon.** That whoever, being armed with a dangerous weapon, shall assault another with such weapon, shall be punished by imprisonment in the penitentiary not more than ten years nor less than six months, or by imprisonment in the county jail not more than one year nor less than one month, or by fine not less than one hundred dollars nor more than one thousand dollars.

Laws Oreg., Oct. 20, 1866; Hill's Ann. Laws, s. 1744; U. S. v. Williams, 6 Sawy., 244; State v. McLennen, 16 Oreg., 60; State v. Godfrey, 17 Ibid., 300.

Sec. 25. **Assault or assault and battery.** That whoever, not being armed with a dangerous weapon, unlawfully assaults or threatens another in a menacing manner, or unlawfully strikes or wounds another, shall be fined not more than five hundred dollars or imprisoned in the county jail not more than six months, or both.

Bate's Ann. Ohio Stat., s. 6823; Baker v. State, 12 Ohio St., 214; Champer v. State, 14 Ibid., 437; Howard v. State, 25 Ibid., 399; Fox v. State, 34 Ibid., 377-380.

Sec. 26. **Robbery, pocket-picking.** That whoever, by force or violence, or by putting in fear, steals and takes from the person of another anything of value, is guilty of robbery, and shall be imprisoned in the penitentiary not more than fifteen years nor less than one year; and whoever, otherwise than by force and violence or by putting in fear, shall steal and take from the person of another anything of value, shall be imprisoned in the penitentiary not exceeding five years nor less than one year.

Bate's Ann. Ohio Stat., s. 6818; Turner v. State, 1 Ohio St., 422; Matthews v. State, 4 Ibid., 540; Hanson v. State, 43 Ibid., 376.

Sec. 27. **Kidnaping.** That every person who, without lawful authority, forcefully seizes and confines another or inveigles or kidnaps another, with intent either—

First. To cause such other person to be secretly confined or imprisoned in said district against his will; or

Second. To cause such other person to be sent out of said district against his will, shall be punished by imprisonment in the penitentiary not less than one nor more than ten years.

Laws Oreg., Oct. 14, 1876; Hill's Ann. Laws, s. 1746.

Sec. 28. **Child stealing.** That every person who maliciously, forcibly, or fraudulently takes or entices away any child under the age of twelve years, with intent to detain and conceal such child from its parent, guardian or other person having the lawful charge of such child, shall be punished by imprisonment in the penitentiary not less than six months nor more than ten years, or by imprisonment in the county jail not exceeding one year, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment.

Laws Oreg., Oct. 14, 1876; Hill's Ann. Laws, s. 1747.

Sec. 29. **Blackmailing.** That whoever, either verbally or by written or printed communication, shall threaten any injury to the person or property of another, or that of any person standing in the relation of parent or child, husband or wife, or sister or brother to such other, or shall in like manner threaten to accuse another of any crime, or of any immoral conduct which, if true, would tend to degrade and disgrace such person, or to expose or publish any of his infirmities or failings, or in any way to subject him to the ridicule or contempt of society, with intent thereby to extort any pecuniary advantage or property from such other, or with intent to compel such other to do any act against his will, shall be imprisoned in the penitentiary not more than five years nor less than six months, or imprisoned in the county jail not more than one year nor less than three months.

Bate's Ann. Ohio Stat., s. 6830; Elliot v. State, 36 Ohio St., 318; Mann v. State, 7 Ohio, 556.

Sec. 30. **Libel.** That if any person shall willfully, by any means other than words orally spoken, publish or cause to be published of or concerning another any false and scandalous matter, with intent to injure or defame such other person, upon conviction thereof he shall be punished by imprisonment in the county jail not less than three months nor more than one year, or by a fine not less than one hundred dollars nor more than five hundred dollars. Any allusion to any person or family, with intent to injure, defame, or maliciously annoy such family, shall be deemed to come within the provisions of this section.

Laws Oreg., Oct. 21, 1878; Hill's Ann. Laws, s. 1749.

CHAPTER THREE.

OFFENSES AGAINST PROPERTY.

Sec.
31. Arson by burning dwelling house (in nighttime).
32. Arson by burning other building or boat (in nighttime).
33. Maliciously burning other buildings.
34. Preceding sections of this chapter to extend to married women.
35. Malicious burning of lumber or vegetable products.
36. Burning with intent to injure insurer.
37. Burglary in dwelling house (in nighttime).
38. Burglary not in dwelling house.
39. Burglary in dwelling house by attempting to get out.
40. Breaking and entering, what constitutes.
41. Larceny.

Sec.
42. Larceny in house, boat, or public building.
43. Larceny by stealing horse, etc.
44. Driving domestic animals from their range, etc.
45. Larceny by altering marks or brands upon animals.
46. Embezzlement by servant.
47. Embezzlement by bailee.
48. Embezzlement of public money.
49. Same subject.
50. Trustees converting property.
51. Banker, attorney, etc., converting property.
52. Buying, receiving, or concealing stolen property.
53. Larceny by falsely personating another.
54. Obtaining goods or writing by false pretenses.
55. Malicious or wanton injury to animals or other personal property.
56. Destroying boat or vessel with intent to defraud owner or owner of goods laden thereon.
57. Fitting out vessel with intent to be destroyed.
58. Making or exhibiting false bill of lading.
59. Making conveyance without title with intent to defraud.
60. Boom, bridge, road, wharf, etc.
61. Setting fire to prairie.
62. Injury to fruit trees, fences, etc.
63. Injury to monuments, etc.
64. Trespassing on improved lands.
65. Fast driving over public bridge.
66. Trespassing on lands of another.
67. Trespassing on inclosed lands.
68. Evidence of notice.
69. Using false weight, etc.
70. Opening or publishing contents of sealed letter.
71. Fraudulently producing heir.
72. Substituting another child for infant.
73. Officer, etc., of corporation falsifying records.
74. Officer, etc., of corporation publishing false reports.
75. Trespass on mining claims.

Sec. 31. Arson by burning dwelling house (in nighttime). That if any person shall willfully and maliciously burn any dwelling house of another, or shall willfully or maliciously set fire to any building owned by himself or another, by the burning whereof any dwelling house of another shall be burned such person shall be deemed guilty of arson, and upon conviction thereof shall be punished by imprisonment in the penitentiary not less than ten nor more than twenty years.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1750.

Sec. 32. Arson by burning other building or boat (in nighttime). That if any person shall willfully and maliciously burn any church, court-house, town-house, meetinghouse, asylum, college, academy, schoolhouse, prison, jail, or other public building erected or used for public uses, or any steamboat, ship, or other vessel, or any banking house, warehouse, express office, storehouse, manufactory, mill, barn, stable, shop, or office of another, or shall willfully and maliciously set fire to any building or boat owned by himself or another, by the burning whereof any edifice, building, boat, or vessel mentioned in this section shall be burned such person shall be deemed guilty of arson, and upon conviction thereof shall be punished by imprisonment in the penitentiary not less than five nor more than fifteen years.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1751.

Sec. 33. Maliciously burning other buildings. That if any person shall willfully and maliciously burn any building whatsoever of another other than those specified in sections thirty-one and thirty-two, or shall willfully and maliciously burn any bridge, lock, dam, or flume of another, or erected or used for public uses, such person, upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than one nor more than ten years.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1753.

Sec. 34. Preceding sections of this chapter to extend to married women. That the preceding sections of this chapter shall each extend to and include a married woman who may commit either of the crimes therein specified,

though the property burned or set fire may belong wholly or in part to her husband.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1754.

Sec. 35. **Malicious burning of lumber or vegetable products.** That if any person shall willfully and maliciously burn any pile or parcel of boards or other lumber, timber, or wood; or any stack of hay, grain, or other vegetable product; or any hay, grain, or other vegetable product severed from the soil, but not stacked; or any growing grass or grain, or other growing vegetable product of the soil, such person, upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than six months nor more than three years.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1755.

Sec. 36. **Burning with intent to injure insurer.** That if any person shall willfully burn or in any other manner injure or destroy any property whatever which is at the time insured against loss or damage by fire or other casualty, with intent to defraud or prejudice the insurer, whether the same be the property of such person or of any other, such person, upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than three nor more than seven years.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1756.

Sec. 37. **Burglary in dwelling house in nighttime.** That if any person shall break and enter any dwelling house in which there is at the time some human being, with intent to commit a crime therein, or, having entered with such intent, shall break any such dwelling house or be armed with a dangerous weapon therein, or assault any person lawfully therein, such person shall be deemed guilty of burglary, and upon conviction thereof shall be punished by imprisonment in the penitentiary not less than one nor more than fifteen years.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1758; State v. Mack, 20 Oreg., 235; State v. Hunitz, 25 Oreg., 349.

Sec. 38. **Burglary not in dwelling house.** That if any person shall break and enter any building within the curtilage of any dwelling house, but not forming a part thereof, or shall break and enter any building or part thereof, booth, tent, railway car, vessel, boat, or other structure or erection in which any property is kept, with intent to steal therein or to commit any felony therein, such person shall be deemed guilty of burglary, and upon conviction thereof shall be punished by imprisonment in the penitentiary not less than two nor more than five years.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1760; State v. Johns, 15 Oreg., 27; State v. Wright et al., 19 Oreg., 260.

Sec. 39. **Burglary in dwelling house by attempting to get out.** That if any person, having committed or attempted to commit a crime in the dwelling house of another, shall break any outer door, window shutter, or other part of such house, to get out of the same, such person shall be deemed guilty of burglary, and upon conviction thereof shall be punished by imprisonment in the penitentiary not less than one nor more than three years.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1761.

Sec. 40. **Breaking and entering, what constitutes.** That every unlawful entry of a dwelling house with intent to commit a crime therein shall be deemed a breaking and entering of such dwelling house within the meaning of section thirty-seven; and every unlawful entry of any building, booth, tent, railway car, vessel, boat, or other structure or erection mentioned in section thirty-eight, with intent to steal or commit any felony therein, shall be deemed a

breaking and entering of the same within the meaning of such section thirty-eight.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1762; State v. Huntley, 25 Oreg., 349.

Sec. 41. **Larceny.** That if any person shall steal any goods or chattels, or any Government note, or bank note, promissory note, or bill of exchange, bond, or other thing in action, or any book of accounts, order, or certificate, concerning money or goods, due or to become due or to be delivered, or any deed or writing containing a conveyance of land or any interest therein, or any bill of sale, or writing containing a conveyance of goods or chattels or any interest therein, or any other valuable contract in force, or any receipt, release, or defeasance, or any writ, process, or public record, the property of another, such person shall be deemed guilty of larceny, and upon conviction thereof, if the property stolen shall exceed in value thirty-five dollars, shall be punished by imprisonment in the penitentiary not less than one nor more than ten years; but if the property stolen shall not exceed the value of thirty-five dollars, such person, upon conviction thereof, shall be punished by imprisonment in the county jail not less than one month nor more than one year, or by fine not less than twenty-five nor more than one hundred dollars.

Laws Oreg., Dec. 19, 1865; Hill's Ann. Laws, s. 1763; State v. Lee Yan, 10 Oreg., 365; State v. Dah, 8 Oreg., 229; State v. Ducker, 8 Oreg., 394; State v. Wilson, 6 Oreg., 429; State v. Johnson, 2 Oreg., 115; State v. McCormack, 8 Oreg., 236.

Sec. 42. **Larceny in house, boat, or public building.** That if any person shall commit the crime of larceny in any dwelling house, banking house, office, store, shop, or warehouse, or in any ship, steamboat, or other vessel, or shall break and enter in the night or day time any church, court-house, meetinghouse, townhouse, college, academy, or other building erected or used for public uses, and commit the crime of larceny therein, such person, upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than one nor more than seven years.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1764.

Sec. 43. **Larceny by stealing horse, etc.** That if any person shall commit the crime of larceny by stealing any horse, gelding, mare, colt, mule, ass, jenny, bull, steer, cow, calf, reindeer, such person, upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than one nor more than fifteen years.

Laws Oreg., Dec. 19, 1865; Hill's Ann. Laws, s. 1766.

Sec. 44. **Driving domestic animals from their range, etc.** That any person, not the owners or owners, who shall knowingly take or drive, without the consent of the owner or owners, or cause to be taken or driven, or shall assist in driving or taking away from the range or place where the same may be lawfully grazing, pasturing, or ranging, any horse, colt, mare, foal, mules, ass, jenny, or bull, cow, heifer, steer, calf, reindeer, sheep, hog, or any other description of domestic animal or animals, from where the same may be lawfully grazing or in the habit of ranging, or where the same may have been herded or placed by the owner or owners thereof, for a distance of more than ten miles from such place where the same may have been so located or placed by the owner or owners thereof, or where the same may be in the habit of grazing or ranging, shall be fined in any sum not less than fifty dollars nor more than four hundred dollars, and shall be liable to the owner or owners of such animal or animals for all damages sustained by reason of such driving or taking away such domestic animal.

Laws Oreg., Oct. 16, 1878; Hill's Ann. Laws, ss. 1767, 1768.

Sec. 45. **Larceny by altering marks or brands upon animals.** That if any

person shall willfully and knowingly make, alter, or deface any artificial ear-mark or brand upon any horse, mare, gelding, foal, mule, ass, jenny, bull, cow, steer, or calf, the property of another, with intent thereby to convert the same to his own use, such person shall be deemed guilty of larceny, and upon conviction thereof shall be punished by imprisonment in the penitentiary not less than one nor more than five years.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1769; State v. Lee, 17 Oreg., 488.

Sec. 46. **Embezzlement by servant.** That if any officer, agent, clerk, employee, or servant of any private person or persons, copartnership, or incorporation shall embezzle or fraudulently convert to his own use, or shall take or secrete with intent to embezzle or fraudulently convert to his own use, any money, property, or thing of another which may be the subject of larceny, and which shall have come into his possession or be under his care by virtue of such employment, such officer, agent, clerk, employee, or servant shall be deemed guilty of embezzlement, and upon conviction thereof, if the property embezzled shall exceed in value thirty-five dollars, shall be punished by imprisonment in the penitentiary not less than one nor more than ten years; but if the property embezzled shall not exceed the value of thirty-five dollars, such person, upon conviction thereof, shall be punished by imprisonment in the county jail not less than one month nor more than one year, or by fine not less than twenty-five nor more than one hundred dollars.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1770; State v. Sweet, 2 Oreg., 127; State v. Reinhart, 26 Oreg., 466; State v. Stearns, 26 Oreg., 262.

Sec. 47. **Embezzlement by bailee.** That if any bailee, with or without hire, shall embezzle, or wrongfully convert to his own use, or shall secrete, with intent to convert to his own use, or shall fail, neglect, or refuse to deliver, keep, or account for, according to the nature of his trust, any money or property of another delivered or intrusted to his care or control, and which may be the subject of larceny, such bailee, upon conviction thereof, shall be deemed guilty of embezzlement and punished accordingly; and if any such bailee shall receive grain of any kind from different bailors, and mix the same and store it together in bulk, in such case, in an indictment charging such bailee so mixing and storing grain with committing, with reference to said grain, the crime defined and made penal in this section, it shall not be necessary to charge in said indictment or prove on the trial that the ownership of said grain is in more than one of said bailors. And every mortgagor of personal property having possession of property mortgaged shall be deemed a bailee within the provisions of this section.

Laws Oreg., Oct. 26, 1882; Hill's Ann. Laws, s. 1771; State v. Yon, 20 Oreg., 215; State v. Littschke, 27 Oreg., 189; State v. Thompson, 28 Oreg., 296.

Sec. 48. **Embezzlement of public money.** That if any person shall receive any money whatever for said district, or for any county, town, or other municipal or public corporation therein, or shall have in his possession any money whatever belonging to such district, county, town, or corporation, or in which said district, county, town, or corporation has an interest, and shall in any way convert to his own use any portion thereof, or shall loan, with or without interest, any portion thereof, or shall neglect or refuse to pay over any portion thereof, as by law directed and required, or when lawfully demanded so to do, such person shall be deemed guilty of embezzlement, and upon conviction thereof shall be punished by imprisonment in the penitentiary not less than one nor more than fifteen years, and by fine equal to twice the amount so converted, loaned, or neglected or refused to be paid, as the case may be.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1772; State v. Howe, 27 Oreg., 145.

Sec. 49. **Same subject.** That the amount of the money converted, loaned, or neglected or refused to be paid, must be ascertained by the verdict of the jury as near as may be, and no person in any proceeding against him under section forty-eight can be allowed to set up or prove any private demand which he may have or claim to have against such district, county, town, or corporation as a defense to such proceeding.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1773.

Sec. 50. **Trustees converting property.** That if any person, being the trustee of any property for the benefit of another, or for any public or charitable use, shall, with intent to defraud, by any means convert the same or any portion thereof to his own use or benefit, or to the use and benefit of another not entitled thereto, such person, upon conviction thereof, shall be punished by imprisonment in the county jail not less than three months nor more than one year, or by fine not less than fifty nor more than one thousand dollars.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1800.

Sec. 51. **Banker, attorney, etc., converting property.** That if any person, being a banker, broker, merchant, attorney, or agent, and being intrusted with the property of another, shall, by any means, with intent to defraud, convert the same, or any portion thereof, to his own use or benefit, or to the use or benefit of another not entitled thereto, such person, upon conviction thereof, shall be punished by imprisonment in the county jail not less than three months nor more than one year, or by fine not less than fifty nor more than one thousand dollars.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1801.

Sec. 52. **Buying, receiving, or concealing stolen property.** That every person who buys, receives, or conceals any money, goods, bank notes, or other thing which may be the subject of larceny and which has been feloniously taken or stolen from any other person, knowing the same to have been so taken or stolen, shall be punished by a fine of not more than one thousand dollars and by imprisonment at hard labor not more than three years.

R. S. U. S., 1878, s. 5357.

Sec. 53. **Larceny by falsely personating another.** That if any person shall falsely personate or represent another, and in such assumed character shall receive or obtain any money or property whatever intended to be delivered to the person so personated or represented, with intent to defraud or to convert the same to his own use, such person shall be deemed guilty of larceny, and upon conviction thereof shall be punished accordingly.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1776.

Sec. 54. **Obtaining goods or writing by false pretenses.** That if any person shall, by any false pretenses or by any privy or false token, and with intent to defraud, obtain, or attempt to obtain, from any other person any money or property whatever, or shall obtain, or attempt to obtain with the like intent, the signature of any person to any writing the false making whereof would be punishable as forgery, such person, upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than one nor more than five years. The making of a bill of sale, or assignment, or mortgage of personal property, by any person not the owner thereof, for the purpose of obtaining money or credit or to secure an existing indebtedness, shall be deemed a false pretense within the meaning of this section.

Laws Oreg., Oct. 26, 1882; Hill's Ann. Laws, s. 1777; State v. Lurch, 12 Oreg., 95; State v. Bloodsworth, 25 Oreg., 83.

Sec. 55. **Malicious or wanton injury to animals or other personal property.** That if any person shall maliciously or wantonly kill, wound, disfigure, or injure any animal the property of another, or shall willfully administer any poison to any such animal, or shall maliciously expose any poison with intent that the same shall be taken by any such animal, or shall maliciously or wantonly, in any manner or by any means not otherwise particularly specified in this chapter, destroy or injure any personal property of another, such person, upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than six months nor more than three years or by imprisonment in the county jail not less than three months nor more than one year, or by fine not less than fifty nor more than one thousand dollars.

Laws Oreg., Oct. 26, 1882; Hill's Ann. Laws, s. 1779.

Sec. 56. **Destroying boat or vessel with intent to defraud owner or owner of goods laden thereon.** That if any person shall willfully cast away, burn, sink, or otherwise destroy any ship, steamboat, or other vessel, with intent to injure or defraud any owner of such ship, steamboat, or other vessel, or with intent to injure or defraud the owner of any property laden on board the same, such person, upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than three or more than ten years.

Laws Oreg., Oct. 26, 1882; Hill's Ann. Laws, s. 1780.

Sec. 57. **Fitting out vessel with intent to be destroyed.** That if any person shall lade, equip, or fit out, or assist in lading, equipping, or fitting out, any ship, steamboat, or other vessel, with the intent that the same shall be willfully cast away, burnt, sunk, or otherwise destroyed, to injure or defraud any owner or insurer of said ship, steamboat, or other vessel, or of any property laden on board the same, such person, upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than one nor more than five years.

Laws Oreg., Oct. 26, 1882; Hill's Ann. Laws, s. 1781.

Sec. 58. **Making or exhibiting false bill of lading.** That if the owner of any ship, steamboat, or other vessel, or of any property laden or pretended to be laden on board the same, or if any other person concerned or assisting in the fitting out or lading of any such ship, steamboat, or other vessel, shall make out or exhibit or cause to be made out or exhibited any false or fraudulent invoice, bill of lading, bill of parcels, or other false estimate of any property laden or pretended to be laden on board of such ship, steamboat, or other vessel, with intent to injure or defraud any insurer of such ship, steamboat, or other vessel or property, or any part thereof, such person, upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than six months nor more than three years.

Laws Oreg., Oct. 26, 1882; Hill's Ann. Laws, s. 1782.

Sec. 59. **Making conveyance without title with intent to defraud.** That if any person shall falsely and knowingly represent that he is the owner of any land to which he has no title, or shall falsely represent that he is the owner of any interest or estate in any land, and shall execute any conveyance of the same with intent to defraud anyone, such person, upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than six months nor more than two years.

Laws Oreg., Oct. 26, 1882; Hill's Ann. Laws, s. 1783; State v. Bryan, 23 Oreg., 568.

Sec. 60. **Boom, bridge, road, wharf, etc.** That if any person shall willfully break, cut away, injure, or destroy any boom or wharf lawfully established, being upon any river or other water in the said District of Alaska, or break

down, injure, remove, or destroy any free or toll bridge, railway, plank road, macadamized road, or any gate upon any such road, or any lock or embankment of any canal such person shall be imprisoned in the penitentiary not less than six months nor more than two years, or be imprisoned in the county jail not less than three months nor more than one year, or be fined not less than fifty dollars nor more than one thousand dollars.

Laws Oreg., Oct. 19, 1874; Hill's Ann. Laws, ss. 1785-6.

Sec. 61. **Setting fire to prairie.** That if any person shall maliciously or wantonly set on fire any prairie or other grounds, other than his own or those of which he is in the lawful possession, or shall willfully or negligently permit or suffer the fire to pass from his own grounds or premises, to the injury of another, such person, upon conviction thereof, shall be punished by imprisonment in the county jail not less than three months nor more than one year, or by fine not less than fifty nor more than five hundred dollars.

Laws Oreg., Oct. 19, 1874; Hill's Ann. Laws, s. 1787.

Sec. 62. **Injury to fruit trees, fences, etc.** That if any person shall maliciously or wantonly cut down, destroy, or injure any bush, shrub, fruit or other tree not his own, standing or growing for fruit, ornament, or other useful purpose, or shall willfully break the glass in or deface any building not his own, or shall willfully break down or destroy any fence or hedge belonging to or inclosing land not his own, or shall willfully throw down, or open and leave down or open any bars, gate, or fence, or hedge belonging to or inclosing land not his own, or shall maliciously or wantonly sever from the land of another any produce thereof, such person, upon conviction thereof, shall be punished by imprisonment in the county jail not less than three months nor more than one year, or by fine not less than ten dollars nor more than five hundred dollars.

Laws Oreg., Oct. 19, 1874; Hill's Ann. Laws, s. 1788.

Sec. 63. **Injury to monuments, etc.** That if any person shall willfully deface, break down, injure, remove, or destroy any monument erected or used for the purpose of designating the boundary of any town, tract, or parcel of land, or any tree marked for that purpose; or shall willfully break down, injure, remove, or destroy any milestone, board, or post, or any guide or finger board erected or placed upon any road or highway; or shall willfully alter, deface, or obliterate the inscription upon any such monument, stone, post, or board; or shall willfully extinguish any lamp, or break, injure, destroy, or remove any lamp, lamp-post, sign, or signpost, or any railing or posts erected upon any street, highway, sidewalk, court, or passage, such person, upon conviction thereof, shall be punished by imprisonment in the county jail not less than three months nor more than one year, or by fine not less than ten dollars nor more than five hundred dollars.

Laws Oreg., Oct. 19, 1874; Hill's Ann. Laws, ss. 1789, 1977.

Sec. 64. **Trespassing on improved lands.** That if any person shall willfully enter upon the garden, orchard, or other improved lands of another, or in his possession, with intent to cut, take, carry away, destroy, or injure the trees, grain, grass, hay, fruit, or vegetable products there growing and being, such person, upon conviction thereof, shall be punished by imprisonment in the county jail not less than one nor more than six months, or by fine not less than five nor more than fifty dollars.

Laws Oreg., Oct. 19, 1874; Hill's Ann. Laws, s. 1790.

Sec. 65. **Fast driving over public bridge.** That if any person shall willfully ride or drive over any public bridge at a greater speed than a walk, or

shall drive at any one time more than twenty head of cattle, horses, or mules over any such bridge, such person shall be punished by fine not less than ten nor more than one hundred dollars.

Laws Oreg., Oct. 16, 1878; Hill's Ann. Laws, s. 1792.

Sec. 66. **Trespassing on lands of another.** That if any person shall willfully cut down, destroy, or injure any standing or growing tree upon the lands of another, or shall willfully take or remove from any such lands any timber or wood previously cut or severed from the same, or shall willfully dig, take, quarry, or remove from any such lands any mineral, earth, or stone, such person, upon conviction thereof, shall be punished by imprisonment in the county jail not less than one month nor more than one year, or by fine not less than fifty nor more than one thousand dollars.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1793.

Sec. 67. **Trespassing on lands in possession of another.** That if any person other than an officer on lawful business shall go or trespass on any lands or premises in the lawful occupation of another, and shall fail, neglect, or refuse to depart therefrom immediately and remain away until permitted to return upon the verbal or printed or written notice of the owner or person in the lawful occupation of said lands or premises, such trespasser shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by fine not less than five nor more than fifty dollars, and shall be committed, in default of payment of the fine and costs imposed, one day for each two dollars of the said fine and costs.

Laws Oreg., Oct. 24, 1862; Hill's Ann. Laws, s. 1794; State v. Packwood, 24 Oreg., 261.

Sec. 68. **Evidence of notice.** That printed or written notices, having attached thereto, by authority, the name of the owner or person in the lawful occupation of said lands or premises, and requiring all persons to forbear trespassing on said lands or premises and to depart therefrom, posted in three conspicuous places on said lands or premises, shall be held and deemed to be sufficient prima facie evidence of notice as mentioned in the last preceding section.

Laws Oreg., Oct. 24, 1862; Hill's Ann. Laws, s. 1795.

Sec. 69. **Using false weight, etc.** That if any person shall knowingly use any false weight or measure, and shall thereby defraud or otherwise injure another, or shall knowingly mark or stamp a false weight or measure or false tare upon any cask or package, or shall knowingly sell or offer for sale any cask or package so marked, such person, upon conviction thereof, shall be punished by imprisonment in the county jail not less than one month nor more than one year, or by fine not less than fifty nor more than five hundred dollars.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1796.

Sec. 70. **Opening or publishing contents of sealed letter.** That if any person shall willfully open or read, or cause to be opened and read, any sealed letter not addressed to himself, without being authorized so to do either by the writer of such letter or by the person to whom it is addressed, or shall willfully, without the like authority, publish any letter or portion thereof, knowing it to have been so opened, such person, upon conviction thereof, shall be punished by imprisonment in the county jail not less than one month nor more than one year, or by fine not less than fifty nor more than five hundred dollars; but this section shall not be construed to extend to or include any act made punishable by any other law of the United States.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1797.

Sec. 71. Fraudulently producing heir. That if any person shall fraudulently produce an infant, and falsely pretend that it was born of any parent whose child would be entitled to inherit any real estate or interest therein, or to receive a share of any personal estate, with intent to intercept the inheritance of any such real estate or interest therein, or the distribution of any such personal estate, from any person lawfully entitled thereto, such person upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than one nor more than ten years.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1798.

Sec. 72. Substituting another child for infant. That if any person to whom an infant has been confided for nursing, education, or other purpose, shall, with intent to deceive any parent or guardian of such child, substitute or produce to such parent or guardian another child in the place of the one so confided, such person, upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than one nor more than ten years.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1799.

Sec. 73. Officer, etc., of corporation falsifying records. That if any person, being or assuming to be an officer, agent, or member of any private corporation or company, shall, with intent to defraud or deceive anyone, willfully and knowingly destroy, alter, mutilate, or in any manner falsify, or concur in the destruction, alteration, mutilation, or falsification, of any of the books, papers, writings, or securities belonging to or in the possession of such corporation or company, such person, upon conviction thereof, shall be punished by imprisonment in the county jail not less than three months nor more than one year, or by fine not less than fifty nor more than one thousand dollars.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1802.

Sec. 74. Officer, etc., of corporation publishing false reports. That if any person, being or assuming to be an officer, agent, or member of any private corporation or company, shall, with intent to defraud or deceive anyone, willfully and knowingly make, circulate, or publish, or concur in the making, circulating, or publishing, any written or printed statement or account, concerning or relating to the liabilities, assets, or property of such corporation or company, which statement or account shall be false in any material particular, such person, upon conviction thereof, shall be punished in the manner provided in section seventy-three.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1803.

Sec. 75. Trespass on mining claims. That any person who shall break or rob in any manner, or who shall attempt to break or rob, any flume, rocker, quartz, quartz vein, or lode, bed rock, sluice, sluice box, or mining claim not his own, or who shall trespass upon such mining claim, with the intent to commit a felony, shall, upon conviction thereof, be punished by imprisonment in the penitentiary not less than one nor more than five years, or by fine not less than one hundred nor more than one thousand dollars, or by both such imprisonment and fine.

Laws Oreg., Oct. 15, 1872; Hill's Ann. Laws, s. 1805.

CHAPTER FOUR.

FORGERY AND COUNTERFEITING.

Sec.
76. Forgery of record, certificate, conveyance, etc.
77. Forgery of evidence of debt issued by any Government, etc.
78. Making or having in possession tool designed for counterfeiting.
79. Counterfeiting gold or silver coin, etc.
80. Making or having in possession tool for counterfeiting coin.
81. What sufficient allegation of intention to defraud.
82. Fraudulently joining parts of different instruments.
83. Making false receipt or altering receipt of goods in warehouse.
84. Knowingly using or counterfeiting trade-marks, etc.
85. Affixing fictitious signature.
86. Testimony as to signature to bank notes.
87. Punishment of person convicted of second crime.
88. Adulterating or selling adulterated gold dust.
89. Possession of adulterated gold dust.

Sec. 76. Forgery of record, certificate, conveyance, etc. That if any person shall, with intent to injure or defraud anyone, falsely make, alter, forge, counterfeit, print, or photograph any public record whatever, or any certificate, return, or attestation of any clerk, notary public, or other public officer in relation to any matter wherein such certificate, return, or attestation may be received as legal evidence, or any note, certificate, or other evidence of debt issued by any officer of said district, or any county, town, or other municipal or public corporation therein, authorized to issue the same, or any contract, charter, letters patent, deed, lease, bill of sale, will, testament, bond, writing obligatory, undertaking, letter of attorney, policy of insurance, bill of lading, bill of exchange, promissory note, evidence of debt, or any acceptance of a bill of exchange, indorsement or assignment of a promissory note, or any warrant, order, or check, or money, or other property, or any receipt for money or other property, or any acquittance or discharge for money or other property, or any plat, draft, or survey of land; or shall, with such intent, knowingly utter or publish as true and genuine any such false, altered, forged, counterfeited, falsely printed, or photographed record, writing, instrument, or matter whatever, such person, upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than two nor more than twenty years.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1808; State v. Dunn, 23 Oreg., 562.

Sec. 77. Forgery of evidence of debt issued by any Government, etc. That whoever shall, with intent to injure or defraud anyone, make, alter, forge, or counterfeit any bank bill, promissory note, draft, check, or other evidence of debt issued by any person or by the United States, said District, or any State or Territory of the United States, or any other state, government, or country, or by any corporation, company, or person duly authorized for that purpose by the laws of the United States, said District, or any State or Territory of the United States, or any other state, government, or country, or shall, with intent to injure or defraud anyone, knowingly utter, or publish, or pass, or tender in payment as true and genuine, any such false, altered, forged, or counterfeited bill, note, draft, check, or other evidence of debt, or shall have in his possession any such bill, note, draft, check, or other evidence of debt, with intent to utter or pass the same as true and genuine, knowing the same to be false, altered, forged, or counterfeited, shall be imprisoned in the penitentiary not less than one nor more than twenty years.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, ss. 1809, 1810, 1811.

Sec. 78. Making or having in possession tool designed for counterfeiting. That if any person shall engrave, make, or begin to engrave, make, or mend any plate, block, press, or other tool, instrument, or implement, or shall make, prepare, or provide any paper or other materials adapted and designed for the forging or making any false or counterfeit bill, note, draft, check, or other evidence of debt, as specified in section seventy-seven, or shall have in his possession or control any such plate, block, press, or other tool, instrument, or implement, or paper or other material adapted and designed as aforesaid, with intent to use the same, or to cause or permit the same to be used, in forging or making any such false or counterfeit bill, note, draft, check, or other evidence of debt, such person, upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than one nor more than five years.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1812.

Sec. 79. Counterfeiting gold or silver coin, etc. That if any person shall counterfeit any gold, silver, or other coin current by law or usage within said District, or shall have in his possession or control any false coin counterfeited in the similitude of any gold, silver, or other coin current as aforesaid, knowing the same to be false and counterfeit, and with intent to utter and pass the same as true and genuine, or shall, with intent to injure or defraud anyone, knowingly utter, pass, or tender in payment as true and genuine any such false and counterfeit coin, he shall be imprisoned in the penitentiary not less than one year nor more than ten years.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, ss. 1813, 1814.

Sec. 80. Making or having in possession tool for counterfeiting coin. That if any person shall stamp, engrave, make, or mend, or begin to stamp, engrave, make, or mend, or have in his possession or control, any mold, pattern, die, puncheon, engine, press, or other tool, implement, or instrument adapted and designed for coining or making any counterfeit coin in the similitude of any gold, silver, or other coin current by law or usage in said District, with intent to use the same or cause or permit the same to be used or employed in coining or making any such false and counterfeit coin as aforesaid, such person, upon conviction thereof, shall be punished in the manner provided in section seventy-nine.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1816.

Sec. 81. What sufficient allegation of intention to defraud. That in any case where the intent to injure or defraud is necessary, by the provisions of this chapter, to constitute the crime, it shall be sufficient to allege in the indictment therefor an intent to injure or defraud without naming therein the particular person or body corporate intended to be injured or defrauded, and on the trial of the action it shall not be deemed a variance, but be deemed sufficient, if there appear to be an intent to injure or defraud the United States, or any State, Territory, county, town, or other municipal or public corporation, or any public officer in his official capacity, or any private corporation, copartnership, or member thereof, or any particular person or persons.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1816.

Sec. 82. Fraudulently joining parts of different instruments. That if any person shall connect together different parts of several bank notes or other genuine instruments in such manner as to produce an additional or different note or instrument, with intent to utter or pass all of them as true and genuine, the same shall be deemed a forgery in like manner and with like

effect as if each of them had been falsely made or forged, and shall be punished by imprisonment in the penitentiary not less than two years nor more than twenty years.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1817.

Sec. 83. **Making false receipt or altering receipt of goods in warehouse.** That if any person shall willfully or knowingly make or alter any receipt or other written evidence of the delivery into any warehouse, commission house, forwarding house, mill, store, or other building occupied by him or his employer, of any grain, flour, pork, beef, wool, or other goods, wares, or merchandise which shall not have been so received or delivered previous to the making and uttering of such receipt or other written evidence thereof, such person, upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than one year nor more than five years, or by imprisonment in the county jail not less than three months nor more than one year.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1775.

Sec. 84. **Knowingly using or counterfeiting trademarks, etc.** That if any person shall willfully and knowingly use or cause to be used any private brands, label, stamp, or trade-mark of another, either by counterfeiting the same or using any impression or copy thereof made or prepared by the proprietor thereof, or shall willfully and knowingly use or cause to be used any colorable imitation of such brand, label, stamp, or trade-mark, with intent to deceive any one, such person, upon conviction thereof, shall be punished by imprisonment in the county jail not less than one month nor more than six months, or by fine not less than twenty nor more than three hundred dollars.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1804.

Sec. 85. **Affixing fictitious signature.** That if any fictitious or pretended signature purporting to be the signature of an officer or agent of any public or private corporation shall be affixed to any instrument or writing purporting to be a note, draft, or other evidence of debt issued by such corporation, with intent to utter or pass the same as true and genuine, it shall be deemed a forgery, though no such person may ever have been an officer or agent of such corporation, nor such corporation ever have existed, and the person affixing to such instrument such fictitious or pretended signature shall be punished by imprisonment in the penitentiary not less than two years nor more than twenty years.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1818.

Sec. 86. **Testimony as to signature to bank notes.** That in all prosecutions for forgery or counterfeiting any bank bill or note, or for uttering, publishing, or tendering in payment as true and genuine any forged or counterfeited bank bill or note, or for being in possession thereof with the intent to utter or pass them as true and genuine, the testimony of any person acquainted with the signature of the officer or agent authorized to sign the bills or notes of the bank of which said bill or note is alleged to be a counterfeit or similitude, or who has knowledge of the difference in appearance of the true and counterfeit bills or notes thereof, may be admitted to prove that any such bill or note is counterfeit.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1819.

Sec. 87. **Punishment of person convicted of second crime.** That if any person, having been convicted of any crime defined in any of the preceding sections of this chapter, shall afterwards be convicted of the same or any other

crime so defined, such person shall be punished by imprisonment not less than the longest term mentioned in the section under which he may be indicted and tried.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1821.

Sec. 88. **Adulterating or selling adulterated gold dust.** That if any person shall mix or adulterate any gold dust with any metal or coin found of less value than such gold dust, with intent to pass or sell or in any way dispose of such gold dust, so mixed or adulterated, as genuine, or shall pass, sell, or otherwise dispose of or cause to be sold, passed, or otherwise disposed of, or shall attempt to pass, sell, or in any way dispose of, a genuine and pure, any gold dust so mixed or adulterated, knowing the same to be so mixed or adulterated, he shall be imprisoned in the penitentiary not less than one year nor more than five years.

Laws Oreg., Oct. 22, 1864; Hill's Ann. Laws, ss. 1822-1824.

Sec. 89. **Possession of adulterated gold dust.** That if any person shall have any gold dust in his possession mixed or adulterated as described in section eighty-eight, knowing the same to be mixed or adulterated, with intent to pass or sell or in any wise dispose of the same as pure and genuine, or to cause the same to be sold, passed, or in any way disposed of as pure and genuine gold dust, such person, upon conviction of such offense, shall be punished by imprisonment in the penitentiary not less than one year nor more than five years.

Laws Oreg., Oct. 22, 1864; Hill's Ann. Laws, s. 1823.

CHAPTER FIVE.

OFFENSES AGAINST PUBLIC JUSTICE.

Sec.
90. Perjury and subornation of perjury.
91. Punishment of perjury and subornation.
92. Inciting person to commit perjury.
93. Bribing or offering to bribe officer.
94. Officer receiving or agreeing to receive bribe.
95. Judicial officer, definition of.
96. Executive officer, definition of.
97. Aiding to escape from prison or legal confinement.
98. Same, punishment of.
99. Officer suffering an escape or refusing to receive person committed to his custody.
100. Rescue or aiding prisoner to escape from officer.
101. Assault upon officer of penitentiary.
102. Aiding escape from penitentiary.
103. Assault upon officer by a person imprisoned in county jail.
104. Aiding escape from county jail.
105. Officer refusing or delaying to serve process.
106. Compounding or concealing crime for reward.
107. Neglecting or refusing to aid officer.
108. Falsely assuming to be a magistrate or peace officer.
109. Malfeasance or negligence in office.
110. Destroying, secreting, or mutilating public records.

Sec. 90. **Perjury and subornation of perjury.** That if any person authorized by law to take an oath or affirmation, or of whom an oath or affirmation shall be required by such law, shall willfully swear or affirm falsely in regard to any matter or thing concerning which any oath or affirmation is authorized or required, such person shall be deemed guilty of perjury; and if any person shall procure another to commit the crime of perjury, such person shall be deemed guilty of subornation of perjury.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1825; U. S. v. Passmore, 4 Dall., 378; State v. Witham, 6 Oreg., 366; State v. Spencer, 6 Oreg., 152; U. S. v. Mayer, 1 Deady, 127.

Sec. 91. **Punishment of perjury and subornation.** That every person convicted of the crime of perjury, committed on the trial of or proceedings in a criminal action for a crime punishable with death or imprisonment for life, shall be punished by imprisonment in the penitentiary not less than two or more than twenty years. Every person convicted of the crime of perjury, committed in any proceeding in a court of justice other than such criminal action, shall be punished by imprisonment in the penitentiary not less than three nor more than ten years; and every person convicted of the crime of perjury, committed otherwise than in a proceeding before a court of justice, or convicted of the crime of subornation of perjury, however committed, shall be punished by imprisonment in the penitentiary not less than one nor more than five years.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1825.

Sec. 92. **Inciting person to commit perjury.** That if any person shall endeavor to procure or incite another to commit the crime of perjury, though no perjury be committed, such person, upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than one nor more than three years.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1827.

Sec. 93. **Bribing or offering to bribe officer.** That if any person shall corruptly give, offer, or promise to give any gift, gratuity, valuable consideration, or thing whatever, or shall corruptly promise to do or cause to be done any act beneficial to any judicial or executive officer, with intent to influence the vote, opinion, decision, judgment, or other official conduct of such officer in any matter, question, duty, cause, or proceeding which then is or by law may come or be brought before such officer, or with intent to influence such officer to act in his official capacity in a particular manner so as to produce or prevent any particular result, such person, upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than two nor more than ten years.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1828.

Sec. 94. **Officer receiving or agreeing to receive bribe.** That if any judicial or executive officer shall corruptly accept or receive any gift, gratuity, valuable consideration, or thing whatever, or any promise thereof, or any promise to do or cause to be done any act beneficial to such officer, with the understanding or agreement, express or implied, that such officer will give his vote, opinion, decision, or judgment in a particular manner in any matter, question, duty, cause, or proceeding which then is or may by law come or be brought before such officer, or with the understanding or agreement that such officer will in his official capacity act in a particular manner, or so as to produce or prevent any particular result, such officer, upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than five nor more than fifteen years.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1829.

Sec. 95. **Judicial officer, definition of.** That every person authorized to act as a judge in a court of justice; every person summoned as a juror in any court of justice, or upon any inquest, or before any officer, from the time he is so summoned; and every referee, umpire, or arbitrator, from the time of his appointment, shall be held and deemed to be a judicial officer within the meaning of sections ninety-three and ninety-four, and for the purposes therein expressed.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1830.

Sec. 96. Executive officer, definition of. That every officer of said District, or of any county, town, or other municipal or public corporation therein, not included in the definition of judicial officers, as defined in section ninety-five, from the time of his election or appointment, shall be held and deemed to be an executive officer within the meaning of sections ninety-three and ninety-four, and for the purposes therein expressed.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1832.

Sec. 97. Aiding to escape from prison or legal confinement. That if any person shall convey into or about the yard or grounds of any penitentiary, jail, house of correction, or other place whatever for the confinement of persons upon any warrant, order, or other legal process, any disguise, material, instrument, tool, weapon, or other thing adapted to or useful in aiding any person or prisoner there committed or detained to escape, with intent to effect or facilitate the escape of such person or prisoner, or shall by any means whatever aid or assist any such person or prisoner in an attempt to escape, whether such escape be effected or attempted or not, such person, upon conviction thereof, shall be punished as in the following section provided.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1833.

Sec. 98. Same, punishment of. That if the person whose escape was attempted or effected was committed or detained upon a charge or conviction of a crime punishable with death or imprisonment for life, the punishment therefor shall be imprisonment in the penitentiary not less than ten nor more than twenty years; but if the person whose escape was attempted or effected was committed or detained upon a charge or conviction of a crime not so punishable, the punishment therefor shall be the same as that provided by law for the crime with which such person was charged or convicted; and in case the person whose escape was intended or effected was in custody or confinement upon civil process, or otherwise than upon a charge or conviction of crime, the punishment therefor shall be imprisonment in the county jail not less than three months nor more than one year, or a fine not less than one hundred dollars nor more than five hundred dollars.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1834.

Sec. 99. Officer suffering an escape or refusing to receive person committed to his custody. That if any United States marshal, deputy marshal, jailer, or other officer shall voluntarily or through negligence suffer any person or prisoner committed to or in his custody to escape, or shall willfully refuse to receive into his custody any person or prisoner lawfully committed thereto, such United States marshal, deputy marshal, jailer, or other officer, upon conviction thereof, shall be punished by imprisonment not less than one years nor more than five years, and by a fine not less than two hundred dollars nor more than one thousand dollars.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, ss. 1835, 1836.

Sec. 100. Rescue or aiding prisoner to escape from officer. That if any person shall rescue, or attempt to rescue, any prisoner from any officer or person having the lawful custody of such prisoner, or shall aid or assist any prisoner in escaping or attempting to escape from any officer or person having the lawful custody of such prisoner, such person, upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than two nor more than ten years, or by imprisonment in the county jail not less than three months nor more than one year.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1837.

Sec. 101. Assault upon officer of penitentiary. That if any person impris-

oned in the penitentiary shall, with a deadly weapon, or by any means likely to produce great bodily injury, strike, wound, stab, cut, shoot, or shoot at any superintendent, keeper, or assistant keeper of the penitentiary, or other officer or person having the charge or custody of such person so imprisoned, or if any person sentenced to the penitentiary shall, with a deadly weapon, or by any means likely to produce great bodily injury, strike, wound, stab, cut, shoot, or shoot at any United States marshal, deputy marshal, or his assistants having the charge or custody of the person so sentenced, such person, upon conviction thereof, shall be punished by an additional imprisonment in the penitentiary of not less than three nor more than twenty years.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1900; State v. Smith, 1 Oreg., 205.

Sec. 102. **Aiding escape from penitentiary.** That if any person, with intent to effect or aid the escape of a person imprisoned in any penitentiary or sentenced to such imprisonment, shall assault any officer or person having the charge or custody of the person so imprisoned or sentenced, such person, upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than two nor more than fifteen years.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1901.

Sec. 103. **Assault upon officer by a person imprisoned in county jail.** That if any person imprisoned or sentenced to imprisonment in the county jail or any building, prison, or place used as or in lieu of a county jail shall, with a deadly weapon, or by any means likely to produce great bodily injury, strike, wound, stab, cut, shoot, or shoot at any United States marshal, deputy marshal, jailer, or his assistants having the charge or custody of the person so imprisoned or sentenced, such person, upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than ten nor more than twenty years.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1902.

Sec. 104. **Aiding escape from county jail.** That if any person, with intent to effect or aid the escape of a person imprisoned or sentenced to imprisonment as mentioned in the last preceding section, shall assault any United States marshal, deputy marshal, jailer, or his assistant having the charge or custody of the person so imprisoned or sentenced, such person, upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than three years nor more than ten years.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1903.

Sec. 105. **Officer refusing or delaying to serve process.** That if any officer authorized to serve process shall willfully and wrongfully refuse to execute any lawful process to him directed and delivered, requiring him to arrest or confine any person, or shall willfully and wrongfully omit or delay to execute such process, whereby such person shall escape and go at large, such officer, upon conviction thereof, shall be punished by imprisonment in the county jail not less than three months nor more than one year, or by fine not less than fifty nor more than five hundred dollars.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1838.

Sec. 106. **Compounding or concealing crime for reward.** That if any person having knowledge of the commission of a crime shall accept or receive any gift, gratuity, valuable consideration, or thing whatever, or any promise thereof, or any promise to do or cause to be done any act beneficial to such person, with the understanding or agreement, expressed or implied, to compound or conceal such crime, or not to prosecute therefor or give evidence

thereof, such person, upon conviction thereof, shall, if such crime be punishable with death or imprisonment for life, be punished by imprisonment in the penitentiary not less than one year nor more than five years; or, if such crime is not so punishable, by imprisonment in the county jail not less than three months nor more than one year, or by fine not less than fifty dollars nor more than five hundred dollars.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1839.

Sec. 107. **Neglecting or refusing to aid officer.** That if any person, being required by any peace officer or magistrate to assist him in the execution of his office, in the preservation of the peace, or the arrest of any person for a breach of the peace, or the service of any process, shall neglect or refuse to render such assistance, such person, upon conviction thereof, shall be punished by imprisonment in the county jail not less than one month nor more than six months, or by fine not less than twenty-five dollars nor more than five hundred dollars.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1840.

Sec. 108. **Falsely assuming to be a magistrate or peace officer.** That if any person shall falsely assume to be a magistrate or peace officer, and shall take upon himself to act as such, and require any person to aid or assist him in any matter pertaining to the duty thereof, such person, upon conviction thereof, shall be punished by imprisonment in the county jail not less than three months nor more than one year, or by fine not less than fifty dollars nor more than five hundred dollars.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1841.

Sec. 109. **Malfeasance or negligence in office.** That if any officer of said District, or of any county, town, or other municipal or public corporation therein, other than the governor or judge of the district court, shall willfully and knowingly charge, take, or receive any fee or compensation, other than that authorized or permitted by law, for any official service or duty performed by such officer, or shall willfully neglect or refuse to perform any duty or service pertaining to his office, with intent to injure or defraud anyone, or shall willfully neglect or refuse to perform such duty or service to the injury of anyone, or the manifest hindrance or obstruction of public justice or business, whether such injury, hindrance, or obstruction was particularly intended or not, such officer, upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than six months nor more than one year, or by imprisonment in the county jail not less than three months nor more than one year, or by a fine not less than fifty nor more than five hundred dollars, or by dismissal from office with or without either or any of such punishments.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1852; State v. Packard, 4 Oreg., 157; State v. Parham, 4 Oreg., 188.

Sec. 110. **Destroying, secreting, or mutilating public records.** That if any person, having the legal custody of any public record, book, paper, or writing, shall willfully destroy, secrete, or mutilate the same; or if any attorney shall willfully destroy, secrete, or mutilate any such record, book, paper, or writing, or shall wrongfully take the same from the person having the legal custody thereof, or having obtained possession of such record, book, paper, or writing lawfully, shall wrongfully refuse or neglect to return or produce the same when lawfully required or demanded so to do, such person or attorney, upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than six months nor more than one year, or by imprisonment in the

county jail not less than three months nor more than one year, or by fine not less than one hundred nor more than five hundred dollars.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1853, ex parte Tongue, 29 Oreg., 49.

CHAPTER SIX.

OFFENSES AGAINST THE PUBLIC PEACE.

Sec.
111. Definition of riot and unlawful assembly.
112. Punishment for participating in riot.
113. Disturbance of the peace in towns and villages.
114. Disturbing religious meetings.
115. Disturbing other public meetings.
116. Disorderly conduct before ladies.
117. Carrying concealed weapons.
118. Penalty for carrying concealed weapons.

Sec. 111. **Definition of riot and unlawful assembly.** That any use of force or violence, or any threat to use force or violence, if accompanied by immediate power of execution, by three or more persons acting together and without authority of law, is riot. Whenever three or more persons assemble with intent, or with means and preparations, to do an unlawful act, which would be riot if actually committed, but do not act toward the commission thereof, or whenever such persons assemble without authority of law, and in such manner as is adapted to disturb the public peace or excite public alarm, or disguised in a manner to prevent them from being identified, such an assembly is an unlawful assembly.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1855.

Sec. 112. **Punishment for participating in riot.** That if any person shall be guilty of participating in any riot, such person, upon conviction thereof, shall be punished as follows:

First. If any felony or misdemeanor was committed in the course of such riot, such person shall be punished in the same manner as the principal in such crime;

Second. If such person carried at the time of such riot any species of dangerous weapon, or was disguised, or encouraged or solicited other persons who participated in the riots to acts of force or violence, such person shall be punished by imprisonment in the penitentiary not less than three nor more than fifteen years;

Third. In all other cases such person shall be punished by imprisonment in the county jail not less than three months nor more than one year, or by fine not less than fifty nor more than five hundred dollars.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1856.

Sec. 113. **Disturbance of the peace in towns and villages.** That if any person or persons shall, in any town or village in said District, willfully drive or ride any horse or mule upon any sidewalk therein, or shall willfully drive or ride any horse or mule through the streets thereof at a greater speed than six miles per hour, or shall use any obscene or profane language in any public place in such town or village to the disturbance or annoyance of any person or persons therein, such person or persons so offending shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not less than five nor more than fifty dollars.

Laws Oreg., Oct. 19, 1872; Hill's Ann. Laws, s. 1857.

Sec. 114. **Disturbing religious meetings.** That if any person shall willfully disturb, interrupt, or disquiet any assembly or congregation of people met for religious worship, whether in a house or the open air, by either uttering any profane discourse, committing any rude or indecent act, or making any unnecessary noise within the place where such meeting is held, or so near it as to disturb the order and solemnity thereof, or by exposing for sale or gift any intoxicating liquors or drinks within two miles of the place where any such assembly or congregation shall be actually convened for religious worship, and in a place other than such as shall have been duly licensed therefor, and in which such person shall have usually resided and carried on such business, such person, upon conviction thereof, shall be punished by imprisonment in the county jail not less than one month nor more than six months, or by fine not less than ten dollars nor more than two hundred dollars.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1888.

Sec. 115. **Disturbing other public meetings.** That if any person shall willfully disturb or break up any public meeting or assembly of people other than those mentioned in the section last preceding, lawfully met for a lawful purpose, whether such meeting or assembly be met in a house or in the open air, such person, upon conviction thereof, shall be punished by imprisonment in the county jail not less than one month nor more than three months, or by fine not less than ten dollars nor more than one hundred dollars.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1889.

Sec. 116. **Disorderly conduct before ladies.** That if any person shall be guilty of disorderly conduct or of using obscene language before women, he shall, on conviction thereof, be fined in any sum not less than five nor more than twenty-five dollars.

Laws Oreg., Dec. 19, 1865; Hill's Ann. Laws, s. 1906.

Sec. 117. **Carrying concealed weapons.** That it shall be unlawful for any person to carry concealed about his person, in any manner whatever, any revolver, pistol, or other firearm, or knife (other than an ordinary pocket-knife), or any dirk or dagger, slung shot, metal knuckles, or any instrument by the use of which injury could be inflicted upon the person or property of any other person.

Laws Oreg., Feb. 18, 1885; Hill's Ann. Laws, s. 1969.

Sec. 118. **Penalty for carrying concealed weapons.** That any person violating any of the provisions of the last preceding section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than ten dollars nor more than two hundred dollars, or by imprisonment in the county jail not less than five days nor more than one hundred days, or by both fine and imprisonment, in the discretion of the court. Nothing in this Act shall be construed to apply to any marshal, constable, police, or other peace officer, whose duty it is to serve process or make arrests.

Laws Oreg., Feb. 18, 1885; Hill's Ann. Laws, s. 1970.

CHAPTER SEVEN.

OFFENSES AGAINST MORALITY AND DECENCY.*

Sec.
119. Adultery.
120. Action for adultery, when commenced; adultery by unmarried man.
121. Cohabiting in a state of adultery or fornication.
122. Polygamy.
123. Seduction of chaste female.
124. Indecent exposure and exhibition.
125. Concealing death of child.
126. Indictment of mother for murder of bastard.
127. Keeping bawdyhouse.
128. Common fame, evidence of bawdyhouse.
129. Incest, definition and punishment of.
130. Sodomy.
131. Illegal disinterment.
132. Injuring tombstones and trespassing on graveyards.
133. Making roads through graveyards.
134. Cruelty to animals.

Sec. 119. **Adultery.** That whoever, being married, shall voluntarily have sexual intercourse with a person other than the offender's husband or wife is guilty of adultery, and shall be fined not more than two hundred dollars or be imprisoned in the county jail not more than three months.

Bishop & D., s. 415.

Sec. 120. **Action for adultery, when commenced; adultery by an unmarried man.** That a prosecution for the crime of adultery shall be commenced within three years from the time of committing the crime. When the crime of adultery is committed between a married woman and an unmarried man, the man shall be deemed guilty of adultery also, and be punished accordingly.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1858.

Sec. 121. **Cohabiting in a state of adultery or fornication.** That whoever cohabits with another in a state of adultery or fornication shall be fined not more than five hundred dollars or imprisoned in the penitentiary not more than two years, or both.

Bate's Ann. Ohio Stat., s. 7020; Holdren v. State, 29 Ohio St., 651; State v. Brown, 47 Ibid., 102-105.

Sec. 122. **Polygamy.** That whoever, having a husband or wife, marries another, whether married or single, or simultaneously, or on the same day, marries more than one woman, is guilty of polygamy, and shall be imprisoned in the penitentiary not more than seven years nor less than one year. This section does not extend to any person whose husband or wife has been continually absent for five consecutive years, and is not known to such person to

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*[29 Stat. L., 5, chap. 12.]

Be it enacted, etc. That any person who, in any of the Territories or the District of Columbia, shall voluntarily engage in a pugilistic encounter between man and man or a fight between a man and a bull or any other animal, for money or for other thing of value, or for any championship, or upon the result of which any money or any thing of value is bet or wagered, or to see which any admission fee is charged, either directly or indirectly, shall be deemed guilty of a felony, and upon conviction shall be punished by imprisonment in the penitentiary not less than one nor more than five years.

Sec. 2. By the term "pugilistic encounter," as used in this bill, is meant any voluntary fight by blows by means of fists or otherwise, whether with or without gloves, between two or more men, for money or for a prize of any character, or for any other thing of value, or for any championship, or upon the result of which any money or any thing of value is bet or wagered, or to see which any admission fee is charged, either directly or indirectly.

Approved, Feb. 7, 1896.

be living, and is believed by such person to be dead, nor to any person legally divorced from the bonds of matrimony.

Bate's Ann. Ohio Stat., s. 7018; 22 U. S. Stat. L. 30; 24 Ibid., 635; Shaffer v. State, 20 Ohio, 1; Reynolds v. U. S., 98 U. S., 145.

Sec. 123. **Seduction of a chaste female.** That if any person, under promise of marriage, shall seduce and have illicit connection with any unmarried female of previous chaste character, such person, upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than one nor more than five years, or by imprisonment in the county jail not less than three months nor more than one year, or by fine not less than five hundred nor more than one thousand dollars. A subsequent marriage of the parties, or offer to marry in good faith, is a defense to a violation of this section.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1863; State v. Adams, 25 Oreg., 172.

Sec. 124. **Indecent exposure and exhibition.** That if any person shall willfully and lewdly expose his person or the private parts thereof in any public place, or in any place where there are present other persons to be offended or annoyed thereby, or shall take any part in any model artist exhibition, or make any other exhibition of himself to public view, or to the view of any number of persons, such as is offensive to decency, or is adapted to excite vicious or lewd thoughts or acts, such person, upon conviction thereof, shall be punished by imprisonment in the county jail not less than three months nor more than one year, or by fine not less than fifty nor more than five hundred dollars.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1864.

Sec. 125. **Concealing death of child.** That if any woman shall conceal the death of any issue of her body, so that it may not be known whether such issue was born alive or not, or whether it was not murdered, such woman, upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than six months nor more than one year, or by imprisonment in the county jail not less than three months nor more than one year.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1865.

Sec. 126. **Indictment of mother for murder of bastard.** That when a woman is indicted for the murder of her bastard infant, she may also be charged in the same indictment with the crime defined in the last preceding section, and if she shall be found not guilty of the charge of murder she may be found guilty of the crime defined in such section, and punished accordingly.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1866.

Sec. 127. **Keeping bawdy-house.** That if any person shall keep or set up a house of ill fame, brothel, or bawdyhouse for the purpose of prostitution, fornication, or lewdness, such person, upon conviction thereof, shall be punished by imprisonment in the county jail not less than three months nor more than one year, or by fine not less than one hundred nor more than five hundred dollars.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1867; Wong v. Astoria, 13 Oreg., 538.

Sec. 128. **Common fame evidence of bawdyhouse.** That in all prosecutions for the crime defined in the section last preceding, common fame shall be competent evidence in support of the indictment; and whenever any lessee or occupant of any house shall be convicted of any such crime, the lease or contract for the hiring or occupancy of such house shall, at the option of the lessor or owner, become void, and such lessor or owner shall thereupon be entitled to recover the possession of such premises as in the case of a tenant holding over after the expiration of his time.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1868.

Sec. 129. **Incest, definition and punishment.** That if any person related to

another person within and not including the fourth degree of consanguinity, computed according to the rules of the civil law, shall marry or cohabit with, or have sexual intercourse with such other so related person, knowing her or him to be within said degree of relationship, the person so offending shall be deemed guilty of incest, and on conviction thereof shall be punished by imprisonment in the penitentiary not less than three years and not more than fifteen years.

24 Stat. L. 635, s. 4.

Sec. 130. **Sodomy.** That if any person shall commit sodomy, or the crime against nature, either with mankind or beast, such person upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than one year nor more than five years.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1874.

Sec. 131. **Illegal disinterment.** That if any person shall willfully and wrongfully dig up, disinter, remove, or convey away any human body, or the remains thereof, such person, upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than six months nor more than two years, or by imprisonment in the county jail not less than three months nor more than one year.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1875.

Sec. 132. **Injuring tombstones and trespassing on graveyards.** That any person who shall willfully destroy, mutilate, deface, injure, or remove any tomb, monument, or gravestone, or other structure in any cemetery, or any fence, railing, or other work for the protection or ornament of a cemetery, or tomb, monument, or gravestone, or other structure aforesaid, or of any cemetery lot within a cemetery, or shall willfully destroy, cut, or break, or injure any tree, shrub, or plant within the limits of a cemetery, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be punished by a fine not less than five dollars nor more than five hundred dollars, and imprisonment in the county jail for a term not less than one nor more than thirty days, according to the nature and aggravation of the offense, and such offender shall also be liable in an action of trespass to pay all such damages as have been occasioned by his unlawful act or acts.

Laws Oreg., Oct. 20, 1882; Hill's Ann. Laws, s. 1876.

Sec. 133. **Making roads through graveyards.** That if any person other than an officer on lawful business shall, without authority specially granted by law, or without the authority or consent of the proprietor or owner, open or make any highway, street, road, railway, macadamized road, or other thing in the nature of a public easement, over, in, through, or upon any inclosure or yard used for the burial of the dead, or shall begin to open or make any such public easement over, in, through, or upon any such inclosure or yard, such person, upon conviction thereof, shall be punished by imprisonment in the county jail not less than three months nor more than one year, or by fine not less than one hundred nor more than five hundred dollars.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1877.

Sec. 134. **Cruelty to animals.** That if any person shall cruelly beat or torture any animal, whether belonging to himself or another, such person, upon conviction thereof, shall be punished by imprisonment in the county jail not less than ten nor more than thirty days, or by fine not less than five nor more than fifty dollars.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1878.

CHAPTER EIGHT.

OFFENSES AGAINST PUBLIC POLICY.

Sec.
135. Setting up or promoting lotteries.
136. Selling lottery tickets.
137. Advertising lottery tickets.
138. Selling tickets in fictitious lotteries.
139. When defendant to prove existence of lottery.
140. Second conviction.
141. Profanation of Sunday.
142. Selling liquor or firearms to Indians.
143. Suffering vicious animals to run at large.
144. Taking female under sixteen years of age without consent of parents.
145. Disposing of opium other than to druggists.
146. Selling opium.
147. "Opium den," defined.
148. Frequenting opium den.
149. Penalty for violating above sections.
150. General reputation as evidence.
151. Definition and punishment of vagrancy.
152. Gambling.

Sec. 135. **Setting up or promoting lotteries.** That if any person shall promote or set up any lottery for money or other valuable thing, or shall dispose of any property of value, real or personal, by way or means of lottery, or shall aid or be in any way concerned in setting up, managing, or drawing such lottery, or shall, in any house, shop, boat, shed, or building owned or occupied by him or under his control, knowingly permit or suffer the setting up, management, or drawing of any such lottery, or the sale of any lottery tickets, share of a ticket, or any writing, token, or other device purporting or intended to entitle the holder or bearer thereof, or any other person, to any prize or interest or share thereof, to be drawn in any lottery, such person, upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than six months nor more than one year, or by imprisonment in the county jail not less than three months nor more than one year, or by fine not less than one hundred nor more than one thousand dollars.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1881.

Sec. 136. **Selling lottery tickets.** That if any person shall sell, either for himself or another, or shall offer for sale, or shall have in his possession with intent to sell or offer for sale, or to exchange or negotiate, a ticket or share of a ticket in any such lottery, or any writing, token, or other device as is mentioned in the section last preceding, such person, upon conviction thereof, shall be punished by imprisonment in the county jail not less than three months nor more than one year, or by fine not less than fifty dollars nor more than five hundred dollars.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1882.

Sec. 137. **Advertising lottery tickets.** That if any persons shall advertise any lottery ticket or share in such ticket, or any writing, token, or other device as is mentioned in section one hundred and thirty-eight, for sale, either for himself or another, or shall in any way invite or entice, or attempt to invite or entice, another to purchase or receive the same, or shall set up or exhibit any sign, symbol, or any emblematic or other representation of a lottery, where such ticket, share thereof, writing, token, or other device can be purchased or obtained, such person, upon conviction thereof, shall be punished by imprisonment in the county jail not less than one month nor more than six months, or by a fine not less than twenty dollars nor more than two hundred dollars.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1883.

Sec. 138. **Selling tickets in fictitious lotteries.** That if any person shall make or sell or offer for sale, or have in his possession with intent to sell, exchange,

or negotiate, either for himself or another, any false or fictitious lottery ticket or share thereof, or any writing, token, or other device as is mentioned in section one hundred and thirty-five, or any ticket or share thereof in any pretended or fictitious lottery, knowing the same to be false or fictitious, or shall receive any money or other thing of value for any such ticket or share thereof, or for any such writing, token, or other device, purporting that the owner, holder, or bearer thereof shall be entitled to receive any prize or any share of any prize, or anything of value that may be drawn in such lottery, knowing the same to be false or fictitious, such person, upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than one year nor more than three years.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1884.

Sec. 139. **When defendant to prove existence of lottery.** That upon the trial of an indictment for any of the crimes defined in the section last preceding, any ticket or share of a ticket, or any writing, token, or other device therein mentioned which the defendant shall have made, sold, or offered for sale, or shall have had in his possession with intent to sell, or for which he shall have received any money or other valuable thing, shall be deemed to be false, spurious, or fictitious, unless such defendant shall prove the same to be true and genuine and to have been duly issued by authority of law, and that such lottery was at the time existing and undrawn, and that such ticket or share thereof, or writing, token, or other device was issued by lawful authority and binding upon the person who issued the same.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1885.

Sec. 140. **Second conviction.** That if any person, having been convicted of a crime defined in sections one hundred and thirty-five and one hundred and thirty-six, shall afterwards be convicted of the same or any other crime therein defined, such person shall be punished by imprisonment in the penitentiary not less than one nor more than three years.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1886.

Sec. 141. **Profanation of Sunday.** That if any person shall keep open any store, shop, grocery, ball alley, billiard room, or tippling house, for purpose of labor or traffic, or any place of amusement, on the first day of the week, commonly called Sunday or the Lord's day, such person, upon conviction thereof, shall be punished by a fine not less than five nor more than fifty dollars: Provided, That the above provision shall not apply to the keepers of drug stores, doctor shops, undertakers, livery-stable keepers, barbers, butchers, and bakers, and all circumstances of necessity and mercy may be pleaded in defense, which shall be treated as questions of fact for the jury to determine, when the offense is tried by jury.

Laws Oreg., Dec. 8, 1865; Hill's Ann. Laws, s. 1890.

Sec. 142. **Selling liquor or firearms to Indians.** That if any person shall, without the authority of the United States, or some authorized officer thereof, sell, barter, or give to any Indian or half-breed who lives and associates with Indians any firearms or ammunition therefor whatever, or any spirituous, malt, or vinous liquor, such person, upon conviction thereof, shall be punished by imprisonment in the county jail not less than two months nor more than six months, or by fine not less than one nor more than five hundred dollars. That the term "Indian" in this Act shall be so construed as to include the aboriginal races inhabiting Alaska when annexed to the United States, and their descendants of the whole or half blood. Section nineteen hundred and fifty-five of the Revised Statutes of the United States, and all that part of section fourteen of

"An Act providing a civil government for Alaska," approved May seventeenth, eighteen hundred and eighty-four, after the word "provided," is hereby repealed.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1891.

Sec. 143. **Suffering vicious animals to run at large.** That if any person, being the owner or having the control of any dangerous or vicious animal, knowing such animal to be dangerous or vicious, shall willfully or negligently permit or suffer the same to be at large in any neighborhood or on any public highway, such person, upon conviction thereof, shall be punished by fine not less than ten nor more than fifty dollars.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1894.

Sec. 144. **Taking female under sixteen years of age without consent of parents.** That if any person shall for purposes of prostitution or marriage take away any female under the age of sixteen years from her father, mother, guardian, or other person having legal charge of her person, such person, upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than one nor more than two years, or by imprisonment in the county jail not less than three months nor more than one year, or by fine not less than one hundred nor more than five hundred dollars.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1895.

Sec. 145. **Disposing of opium other than to druggists.** That it shall be unlawful to sell or give away opium, or any preparation of which opium is the principal medicinal agent, to any person except druggists and practicing physicians, except on the prescription of a practicing physician, written in the English or Latin language; and the druggist filling the prescription shall keep the same on file for one year subject to be inspected by any public officer of the district.

Laws Oreg., Nov. 25, 1885; Hill's Ann. Laws, s. 1919.

Sec. 146. **Selling opium.** That no person shall sell any opium, or preparation of which opium is the principal medicinal agent, to be smoked on or about the premises where sold.

Laws Oreg., Nov. 25, 1885; Hill's Ann. Laws, s. 1920.

Sec. 147. **"Opium den" defined.** That any building where opium is sold for the purpose of being smoked on or about the premises, or where the same is smoked, shall be considered an opium den.

Laws Oreg., Nov. 25, 1885; Hill's Ann. Laws, s. 1921.

Sec. 148. **Frequenting opium den.** That it shall be unlawful for any person to frequent any opium den for the purpose of purchasing or smoking opium, or any preparation in which opium is the principal medicinal agent.

Laws Oreg., Nov. 25, 1885; Hill's Ann. Laws, s. 1922.

Sec. 149. **Penalty for violating above sections.** That any person violating any of the four sections last preceding shall be punished by imprisonment in the penitentiary not less than six months nor more than two years, or by imprisonment in the county jail not less than one month nor more than six months, or by fine not less than fifty dollars nor more than five hundred dollars.

Laws Oreg., Nov. 25, 1885; Hill's Ann. Laws, s. 1923.

Sec. 150. **General reputation as evidence.** That in a prosecution for any violation of the provisions of sections one hundred and forty-six, one hundred and forty-seven, and one hundred and forty-eight, general reputation shall be received in evidence to establish the character of any building as an opium den,

and proof that any person frequents such den shall be prima facie evidence that such person frequents such den for the purpose of smoking opium.

Laws Oreg., Nov. 25, 1885; Hill's Ann. Laws, s. 1924.

Sec. 151. **Definition and punishment of vagrancy.** That all idle or dissolute persons who have no visible means of living, or lawful occupation or employment by which to earn a living; all able-bodied persons who shall be found begging the means of support in public places, or from house to house, or who shall procure a child or children so to do; all persons who live in houses of ill repute, shall be deemed vagrants, and upon conviction thereof shall be fined not less than twenty dollars nor more than two hundred and fifty dollars, or by imprisonment in the county jail not less than ten nor more than twenty-five days, or both, in the discretion of the court.

Laws Oreg., Feb. 21, 1887; Hill's Ann. Laws, s. 1958.

Sec. 152. **Gambling.** That each and every person who shall deal, play, or carry on, open or cause to be opened, or who shall conduct, either as owner, proprietor or employee, whether for hire or not, any game of faro, monte, roulette, rouge-et-noir, lansquenet, rondo, vingt-un, twenty-one, poker, draw poker, brag, bluff, thaw, craps, or any banking or other game played with cards, dice, or any other device, whether the same shall be played for money, checks, credit, or any other representative of value, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than five hundred dollars, and shall be imprisoned in the county jail until such fine and costs are paid: Provided, That such person so convicted shall be imprisoned one day for every two dollars of such fine and costs: And provided further, That such imprisonment shall not exceed one year.

Laws Oreg., Oct. 20, 1876; Hill's Ann. Laws, s. 1968.

CHAPTER NINE.

OFFENSES AGAINST PUBLIC CONVENIENCE.

Sec.
153. Throwing ballast into navigable stream.
154. Injuring buoys or beacons.
155. Tearing down posted notices.

Sec. 153. **Throwing ballast into navigable stream.** That if any person, whether he be an officer of a vessel or not, shall discharge the ballast of any vessel into the navigable portions or channels of any of the bays, harbors, or rivers of said District, or within the jurisdiction of said District, so as to injuriously affect such portions or channels of such bays, harbors, or rivers, or to obstruct the navigation thereof, such person, upon conviction thereof, shall be punished by imprisonment in the county jail not less than three months nor more than one year, or by fine not less than one hundred nor more than five hundred dollars.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1973. (See Laws U. S., 2 Supp., p. 251.)

Sec. 154. **Injuring buoys or beacons.** That any person or persons who shall moor any vessel or vessels of any kind or name whatsoever, or any boat, skiff, barge, scow, raft, or part of a raft, to any buoy or beacon placed in the navigable waters of the District, or in any bay, river, or arm of the sea bordering upon said District, by the authority of the United States Light-House Board, or shall in any manner hang on with any vessel, boat, skiff, barge, scow, raft,

or part of a raft, to any such buoy or beacon, or shall willfully remove, damage, or destroy any such buoy or beacon, or shall cut down, remove, damage, or destroy any beacon or beacons erected on land in said District by authority of the United States Light-House Board, shall for every such offense be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not less than one hundred nor more than two hundred dollars, or by imprisonment in the county jail not less than one nor more than six months, or by both such fine and imprisonment, in the discretion of the court.

Laws Oreg., Oct. 16, 1874; Hill's Ann. Laws, s. 1974.

Sec. 155. **Tearing down posted notices.** That if any person shall willfully tear down, alter, or deface any posted, written, or printed notice, posted or put up in pursuance of any law requiring or authorizing the same to be done, before the time for which such notice is given has expired, such person, upon conviction thereof, shall be punished by imprisonment in the county jail not less than one month nor more than six months, or by fine not less than fifty dollars nor more than three hundred dollars.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1976.

CHAPTER TEN.

OFFENSES AGAINST THE PUBLIC HEALTH.

Sec.
156. Selling unwholesome provisions.
157. Adulterating provisions.
158. Adulterating drugs.
159. Polluting water used for domestic purposes.
160. Same subject.
161. Penalty.
162. Spreading dangerous disease.
163. Selling poison without label.

Sec. 156. **Selling unwholesome provisions.** That if any person shall knowingly sell any kind of diseased, corrupted, or unwholesome provisions, whether for meat or drink, without making the same fully known to the buyer, such person, upon conviction thereof, shall be punished by imprisonment in the county jail not less than three months nor more than one year, or by fine not less than fifty nor more than five hundred dollars.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1978.

Sec. 157. **Adulterating provisions.** That if any person shall adulterate, for the purpose of sale, any substance intended for meat or drink with any substance injurious to health, or shall sell or offer for sale any substance so intended, knowing the same to be so adulterated, such person, upon conviction thereof, shall be punished in the manner provided in the section last preceding.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1979.

Sec. 158. **Adulterating drugs.** That if any person shall adulterate, for the purpose of sale, any drug or medicine in such manner as to render the same injurious to health, or shall knowingly sell or offer for sale any adulterated drug or medicine, such person, upon conviction thereof, shall be punished in the manner provided in section one hundred and fifty-six, and such adulterated drugs or medicines shall be forfeited and destroyed.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1980.

Sec. 159. **Polluting water used for domestic purposes.** That any person who shall put any sewage, drainage, or refuse, or polluting matter, as either by it-

self or in connection with other matter will corrupt or impair the quality of any well, spring, brook, creek, branch, or pond of water which is used or may be used for domestic purposes, shall be deemed guilty of a misdemeanor.

Laws Oreg., Feb. 28, 1885; Hill's Ann. Laws, s. 1981.

Sec. 160. **Same Subject.** That any person who puts any dead animal carcass, or part thereof, excrement, putrid, nauseous, noisome, decaying, deleterious, or offensive substance into, or in any other manner not herein named befouls, pollutes, or impairs the quality of any spring, brook, creek, branch, well, or pond of water which is or may be used for domestic purposes, shall be deemed guilty of a misdemeanor.

Laws Oreg., Feb. 28, 1885; Hill's Ann. Laws, s. 1982.

Sec. 161. **Penalty.** That any person violating the provisions of either of the two sections last preceding shall, upon conviction, be fined not less than ten nor more than fifty dollars, or be imprisoned not less than five nor more than twenty-five days, or by both fine and imprisonment.

Laws Oreg., Feb. 28, 1885; Hill's Ann. Laws, s. 1973.

Sec. 162. **Spreading dangerous disease.** That if any person shall inoculate himself or suffer himself to be inoculated, or shall inoculate another, with the smallpox or any other malignant or infectious disease, within said District, or, being so inoculated, shall come within said District with the intent to cause the prevalence or spread of such disease within said District, such person, upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than one year nor more than three years.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1984.

Sec. 163. **Selling poison without label.** That if any person shall sell or deliver any arsenic, corrosive sublimate, prussic acid, or other poison, without having the word "poison" and the true name thereof in English written or printed upon a label attached to the vial, box, or parcel containing the same, such person, upon conviction thereof, shall be punished by a fine of not less than twenty nor more than one hundred dollars.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1985.

CHAPTER ELEVEN.

OFFENSES CONCERNING THE TELEGRAPH, TELEPHONE, AND SO FORTH.

Sec.
164. Refusing to transmit official dispatch in time of war, and so forth.
165. Malicious injury to telegraph.
166. Divulging or altering dispatch.
167. Sending or delivering false dispatch.
168. Using information contained in dispatch.
169. Delaying or refusing to send dispatch.
170. Opening or obtaining dispatch intended for another.
171. Taking information from wire, and so forth.
172. Bribing operator to disclose private message.

Sec. 164. **Refusing to transmit official dispatch in time of war, etc.** That every telegraph company shall be bound, on application of any officer of said District or of the United States, in case of any war, insurrection, riot, or other civil commotion or resistance of public authority, for the prevention and punishment of crime, or for the arrest of persons suspected or charged therewith, to give to the communications of such officers immediate dispatch, at the price of ordinary communications of the same length; and if any officer, agent, opera-

tor, or employee of any such company shall refuse or willfully omit to transmit such communications as aforesaid, or shall designedly alter or falsify the same, for any purpose whatever, the person so offending shall be liable to indictment, and on conviction may be fined not more than one thousand dollars or imprisoned in jail not more than twelve months or both, at the discretion of the court.

Laws Oreg., Oct. 17, 1862; Hill's Ann. Laws, s. 2000.

Sec. 165. **Malicious injury to telegraph.** That if any person shall willfully and maliciously cut, break, or throw down any pole or any tree or other object used in any line of telegraph, telephone, or system for the transmission of light or power by use of electricity, or shall willfully and maliciously break, displace, or injure any insulator in use in any such line, or shall willfully and maliciously cut, break, or remove from its insulators any wire used for any of the purposes above enumerated, or shall, by the attachment of a ground wire, or by any other contrivance, willfully and maliciously destroy the insulation of such line, or interrupt the transmission of the electric current through the same, or shall in any other manner willfully and maliciously injure, molest, or destroy any property or materials appertaining to any such line, or belonging to any telegraph, telephone, electric light or power company, or shall willfully and maliciously interfere with the use of any telegraph, telephone, electric light or power line, or obstruct or postpone the transmission of any message over any telegraph or telephone line, or procure or advise any such injury, interference, or obstruction, the person so offending shall be deemed guilty of a misdemeanor, and shall be punished by fine not to exceed five hundred dollars, or imprisonment not to exceed six months, or by both such fine and imprisonment, in the discretion of the court, and shall moreover be liable to the company whose property is injured or line obstructed in a sum equal to three times the amount of actual damages sustained thereby.

Laws Oreg., Oct. 17, 1862; Hill's Ann. Laws, s. 2001.

Sec. 166. **Divulging or altering dispatch.** That if any officer, agent, operator, clerk, or employee of any telegraph company, or any other person, shall willfully divulge to any other person than the party from whom the same was received, or to whom the same was addressed, or his agent or attorney, any message received or sent, or intended to be sent, over any telegraph line, or the contents, substance, purport, effect, or meaning of such message, or any part thereof, or shall willfully alter any such message by adding thereto or omitting therefrom any word or words, figure or figures, so as to materially change the sense, purport, or meaning of such message, to the injury of the person sending or desiring to send the same, or to whom the same was directed, the person so offending shall be deemed guilty of a misdemeanor, and shall be punished by a fine not to exceed one thousand dollars or imprisonment not to exceed one year, or by both such fine and imprisonment, in the discretion of the court: Provided, That when numerals or words of number occur in any message the operator or clerk sending or receiving may express the same in words or figures, or in both words and figures, and such fact shall not be deemed an alteration of the message, nor in any manner affect its genuineness, force, or validity.

Laws Oreg., Oct. 17, 1862; Hill's Ann. Laws, s. 2002.

Sec. 167. **Sending or delivering false dispatch.** That if any agent, operator, or employee in any telegraph office, or other person, shall, knowingly and willfully, send by telegraph, to any person or persons, any false or forged message, purporting to be from such telegraph office, or from any other person, or shall willfully deliver, or cause to be delivered, to any person, any such message, falsely purporting to have been received by telegraph, or if any person or per-

sons shall furnish or conspire to furnish, or cause to be furnished, to any such agent, operator, or employee, to be sent by telegraph, or to be so delivered, any such message, knowing the same to be false or forged, with the intention to deceive, injure, or defraud any individual, partnership, or corporation, or the public, the person or persons so offending shall be deemed guilty of a misdemeanor, and shall be punished by a fine not to exceed one thousand dollars or imprisonment not to exceed one year, or by both such fine and imprisonment, in the discretion of the court.

Laws Oreg., Oct. 17, 1862; Hill's Ann. Laws, s. 2003.

Sec. 168. **Using information contained in dispatch.** That if any agent, operator, or employee in any telegraph office shall, in any way, use or appropriate any information derived by him from any private message or messages passing through his hands and addressed to any other person or persons, or in any other manner acquired by him by reason of his trust as such agent, operator, or employee, or shall trade or speculate upon any such information so obtained, or in any manner turn or attempt to turn the same to his account, profit, or advantage, the person so offending shall be deemed guilty of a misdemeanor, and shall be punished by a fine not to exceed one thousand dollars, or imprisonment not to exceed one year, or by both such fine and imprisonment, in the discretion of the court, and shall also be liable in treble damages to the party aggrieved for all loss or injury sustained by reason of such wrongful act.

Laws Oreg., Oct. 17, 1862; Hill's Ann. Laws, s. 2004.

Sec. 169. **Delaying or refusing to send dispatch.** That if any agent, operator, or employee in any telegraph office shall unreasonably and willfully refuse or neglect to send any message received at such office for transmission, or shall unreasonably or willfully postpone the same out of its order, or shall unreasonably and willfully refuse or neglect to deliver any message received by telegraph, the person so offending shall be deemed guilty of a misdemeanor, and may be punished by a fine not to exceed five hundred dollars, or imprisonment not to exceed six months, or by both such fine and imprisonment, in the discretion of the court: Provided, That nothing herein contained shall be construed to require any message to be received, transmitted, or delivered unless the charges thereon shall have been paid or tendered, nor to require the sending, receiving, or delivery of any message counseling, aiding, abetting, or encouraging treason against the Government of the United States, or other resistance to the lawful authority, or any message calculated to further any fraudulent plan or purpose, or to instigate or encourage the perpetration of any unlawful act, or to facilitate the escape of any criminal or person accused of crime.

Laws Oreg., Oct. 17, 1862; Hill's Ann. Laws, s. 2005.

Sec. 170. **Opening or obtaining dispatch intended for another.** That if any person not connected with any telegraph office shall, without the authority or consent of the person or persons to whom the same may be directed, willfully or unlawfully open any sealed envelope inclosing a telegraph message, and addressed to any other person or persons, with the purpose of learning the contents of such message, or shall fraudulently represent any other person or persons, and thereby procure to be delivered to himself any telegraph message addressed to such other person or persons, with the intent to use, destroy, or detain the same from the person or persons entitled to receive such message, the person so offending shall be deemed guilty of a misdemeanor and shall be punished by a fine not to exceed one thousand dollars, or imprisonment not to exceed one year, or by both such fine and imprisonment, in the discretion of the court; and shall, moreover, be liable in damages to the party injured for all loss and damage sustained by reason of such wrongful act.

Laws Oreg., Oct. 17, 1862; Hill's Ann. Laws, s. 2006.

Sec. 171. **Taking information from wire, etc.** That if any person not connected with any telegraph company shall, by means of any machine, instrument, or contrivance, or in any other manner, willfully and fraudulently read or attempt to read any message, or to learn the contents thereof, whilst the same is being sent over any telegraph line, or shall willfully and fraudulently or clandestinely learn or attempt to learn the contents or meaning of any message while the same is in any telegraph office, or is being received thereat, or is sent therefrom, or shall use or attempt to use, or communicate to others, any information so obtained by any person, the person so offending shall be deemed guilty of a misdemeanor, and shall be punished by fine not to exceed one thousand dollars, or imprisonment not to exceed one year, or by both such fine and imprisonment, in the discretion of the court.

Laws Oreg., Oct. 17, 1862; Hill's Ann. Laws, s. 2007.

Sec. 172. **Bribing operator to disclose private message.** That if any person shall, by the payment or promise of any bribe, inducement, or reward, procure or attempt to procure any telegraph agent, operator, or employee to disclose any private message, or the contents, purport, substance, or meaning thereof, or shall offer to any such agent, operator, or employee any bribe, compensation, or reward for the disclosure of any private information received by him by reason of his trust as such agent, operator, or employee, or shall use or attempt to use any such information so obtained, the person so offending shall be deemed guilty of a misdemeanor, and shall be punished by fine not to exceed one thousand dollars, or imprisonment not to exceed one year, or by both such fine and imprisonment, in the discretion of the court.

Laws Oreg., Oct. 17, 1862; Hill's Ann. Laws, s. 2008.

CHAPTER TWELVE.

PROTECTION OF FUR-BEARING ANIMALS AND SALMON.

Sec.
173. Killing of fur-bearing animals prohibited.
174. Power to arrest persons and seize vessels.
175. Remission of fines, etc.
176. St. Paul and St. George islands declared a special reservation.
177. Killing of seal upon them prohibited, when.
178. Killing of certain seal prohibited.
179. Obstructions in streams preventing ascent of salmon prohibited.
180. Methods and times of fishing regulated.
181. Concerning grounds and close seasons.
182. Inspectors.
183. Punishment for violations.

Sec. 173. **Killing of fur-bearing animals prohibited.** That no person shall kill any otter, mink, marten, sable, or fur seal, or other fur-bearing animal within the limits of Alaska Territory, or in the waters thereof; and every person guilty thereof shall, for each offense, be fined not less than two hundred nor more than one thousand dollars, or imprisoned not more than six months, or both; and all vessels, their tackle, apparel, furniture, and cargo, found engaged in violation of this section shall be forfeited; but the Secretary of the Treasury shall have power to authorize the killing of any such mink, marten, sable, or other fur-bearing animal, except fur seal, under such regulations as he may prescribe; and it shall be the duty of the Secretary to prevent the killing of any fur seal and to provide for the execution of the provisions of this section until it is otherwise provided by law; nor shall he grant special privileges under this section.

27 July, 1868; R. S. U. S., 1878, s. 1956.

Sec. 174. **Power to arrest persons and seize vessels.** That the collector and deputy collectors appointed for Alaska Territory, and any person authorized in writing by either of them, or by the Secretary of the Treasury, shall have power to arrest persons and seize vessels and merchandise liable to fines, penalties, or forfeitures under this and the other laws extended over the Territory, and to keep and deliver the same to the marshal.

27 July, 1868; 1 July, 1870; R. S. U. S., 1878, s. 1957.

Sec. 175. **Remission of fines, etc.** That in all cases of fine, penalty, or forfeiture embraced in the Act approved March third, seventeen hundred and ninety-seven, chapter thirteen, or mentioned in any Act in addition to or amendatory of such Act, that have occurred or may occur in the collection district of Alaska, the Secretary of the Treasury is authorized, if in his opinion the fine, penalty, or forfeiture was incurred without willful negligence or intention of fraud, to ascertain the facts in such manner and under such regulations as he may deem proper, without regard to the provisions of the Act above referred to; and upon the facts so to be ascertained he may exercise all the power of remission conferred upon him by that Act as fully as he might have done had such facts been ascertained under and according to the provisions of that Act.

27 July, 1868.

Sec. 176. **St. Paul and St. George islands declared a special reservation.** That the islands of Saint Paul and Saint George, in Alaska, are declared a special reservation for Government purposes; and until otherwise provided by law it shall be unlawful for any person to land or remain on either of those islands, except by authority of the Secretary of the Treasury; and any person found on either of those islands contrary to the provisions hereof shall be summarily removed; and it shall be the duty of the Secretary of War to carry this section into effect.

3 Mar., 1869.

Sec. 177. **Killing of seal upon them prohibited, when.** That it shall be unlawful to kill any fur seal upon the islands of Saint Paul and Saint George, or in the waters adjacent thereto, except during the months of June, July, September, and October in each year; and it shall be unlawful to kill such seals at any time by the use of firearms or by other means tending to drive the seals away from those islands; but the natives of the islands shall have the privilege of killing such young seals as may be necessary for their own food and clothing during other months, and also such old seals as may be required for their own clothing and for the manufacture of boats for their own use; and the killing in such cases shall be limited and controlled by such regulations as may be prescribed by the Secretary of the Treasury.

1 July, 1870; 16 Stat. L., c. 189, s. 1; 24 Mar., 1874; 18 Stat. L., c. 64.

Sec. 178. **Killing of certain seal prohibited.** That it shall be unlawful to kill any female seal or any seal less than one year old at any season of the year, except as above provided; and it shall also be unlawful to kill any seal in the waters adjacent to the islands of Saint Paul and Saint George, or on the beaches, cliffs, or rocks where they haul up from the sea to remain; and every person who violates the provisions of this or the preceding section shall be punished for each offense by a fine of not less than two hundred dollars nor more than one thousand dollars, or by imprisonment not more than six months, or by both such fine and imprisonment; and all vessels, their tackle, apparel, and furniture, whose crews are found engaged in the violation of either this or the preceding section shall be forfeited to the United States.

1 July, 1870; 16 Stat. L., c. 189, s. 2; R. S., s. 1961.

Sec. 179. **Obstruction in streams preventing ascent of salmon prohibited.** That the erection of dams, barricades, fish wheels, fences, or any such fixed or stationary obstructions in any part of the rivers or streams of Alaska, or to fish for or catch salmon or salmon trout in any manner or by any means, with the purpose or result of preventing or impeding the ascent of salmon to their spawning ground, is hereby declared to be unlawful, and the Secretary of the Treasury is hereby authorized and directed to remove such obstructions and to establish and enforce such regulations and surveillance as may be necessary to insure that this prohibition and all other provisions of law relating to the salmon fisheries of Alaska are strictly complied with.

9 June, 1896; 29 Stat. L., 316.

Sec. 180. **Methods and times of fishing regulated.** That it shall be unlawful to fish, catch, or kill any salmon of any variety except with rod or spear above the tide waters of any creeks or rivers of less than five hundred feet width in the Territory of Alaska, except only for purposes of propagation, or to lay or set any drift net, set net, trap, pound net, or seine for any purpose across the tide waters of any river or stream for a distance of more than one-third of the width of such river, stream, or channel, or lay or set any seine or net within one hundred yards of any other net or seine which is being laid or set in said stream or channel, or to take, kill, or fish for salmon in any manner, or by any means, in any of the waters of the Territory of Alaska, either in the streams or tide waters, except Cook Inlet, Prince William Sound, Bering Sea, and the waters tributary thereto, from midnight on Friday of each week until six o'clock antemeridian of the Sunday following; or to fish for or catch, or kill in any manner, or by any appliances except by rod or spear, any salmon in any stream of less than one hundred yards in width in the said Territory of Alaska between the hours of six o'clock in the evening and six o'clock in the morning of the following day of each and every day of the week.

9 June, 1896; 29 Stat. L., 316.

Sec. 181. **Spawning grounds and close seasons.** That the Secretary of the Treasury may, at his discretion, set aside any streams as spawning grounds, in which no fishing will be permitted; and when, in his judgment, the results of fishing operations on any stream indicate that the number of salmon taken is larger than the capacity of the stream to produce, he is authorized to establish weekly close seasons, to limit the duration of the fishing season, or to prohibit fishing entirely for one year or more, so as to permit salmon to increase: Provided, however, That such power shall be exercised only after all persons interested shall have been given a hearing, of which hearing due notice must be given by publication: And provided further, That it shall have been ascertained that the persons engaged in catching salmon do not maintain fish hatcheries of sufficient magnitude to keep such streams fully stocked.

9 June, 1896; 29 Stat. L., 316.

Sec. 182. **Inspector.** That to enforce the provisions of law herein and such regulations as the Secretary of the Treasury may establish in pursuance thereof, he is authorized and directed to appoint one inspector of fisheries, at a salary of one thousand eight hundred dollars per annum, and two assistant inspectors, at a salary of one thousand six hundred dollars each per annum; and he will annually submit to Congress estimates to cover the salaries and actual traveling expenses of the officers hereby authorized and for such other expenditures as may be necessary to carry out the provisions of the law herein.

9 June, 1896; 29 Stat. L., 316.

Sec. 183. **Punishment for violations.** That any person violating the provisions of sections one hundred and seventy-nine, one hundred and eighty, and

one hundred and eighty-one of this Act or the regulations established in pursuance of section one hundred and eighty-two of this Act shall, upon conviction thereof, be punished by a fine not exceeding one thousand dollars or imprisonment at hard labor for a term not exceeding ninety days, or both such fine and imprisonment, at the discretion of the court; and, further, in case of the violation of any of the provisions of section one hundred and seventy-nine, and conviction thereof, a further fine of two hundred and fifty dollars per diem will be imposed for each day that the obstruction or obstructions therein are maintained.

9 June, 1896; 29 Stat. L., 316.

CHAPTER THIRTEEN.

MISCELLANEOUS PROVISIONS AND DEFINITIONS.

Sec.
184. Division of crimes.
185. Parties to crimes.
186. Principals, who deemed such.
187. Accessories, who deemed such.
188. No accessories in misdemeanors.
189. Accessories, how punished.
190. Person not punishable for omission when performed by another.
191. Misdemeanor, punishment for, when not otherwise prescribed.
192. Attempt to commit crime, punishment of.
193. Preceding section, how construed.
194. Computation of sentences.
195. Treatment of convicts.
196. Judgment of imprisonment in penitentiary, effect of.
197. Judgment of imprisonment for life.
198. Person of a convict under the protection of law.
199. Sentences to penitentiary, how executed.
200. "Jail," definition of.
201. Sentences to county jail, how executed.
202. Evidence given by a person may be used against him on a prosecution for perjury.
Sec.
203. Conviction of crime not to work forfeiture of property.
204. Court to ascertain and impose punishments.
205. In prosecution for libel, truth may be given in evidence.
206. Presumption in case of injurious publication.
207. "Dwelling house," definition of, in relation to arson.
208. "Dwelling house," definition of, in relation to burglary.
209. Certain terms presumed to be used in a certain sense.
210. "Signature," what it includes.
211. "Writing" includes printing.
212. "Property" includes both real and personal.
213. The term, "person," what it includes.
214. The singular number includes the plural.
215. Masculine gender, what it comprehends.
216. Intent to defraud, what sufficient.
217. Criminal prosecution not to exclude other remedy or penalty.

Sec. 184. **Division of crimes.** That crimes are divided into felonies and misdemeanors. A felony is a crime punishable with death, or which is or may be punishable by imprisonment in the penitentiary. Every other crime is a misdemeanor.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, ss. 1201, 1202, 1203.

Sec. 185. **Parties to crimes.** That the parties to crime are classified as—

First. Principals.

Second. Accessories.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 2010.

Sec. 186. **Principals, who deemed such.** That all persons concerned in the commission of a crime, whether it be felony or misdemeanor, and whether they directly commit the act constituting the crime or aid and abet in its commission, though not present, are principals, and to be tried and punished as such.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 2011; State v. Moran, 15 Oreg., 275.

Sec. 187. Accessories, who deemed such. That all persons who, after the commission of any felony, conceal or aid the offender, with knowledge that he has committed a felony and with intent that he may avoid or escape from arrest, trial, conviction, or punishment, are accessories.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 2012; State v. Kirk, 10 Oreg., 505.

Sec. 188. No accessories in misdemeanors. That in misdemeanors there are no accessories.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 2013

Sec. 189. Accessories, how punished. That except in cases where a different punishment is prescribed by law, an accessory to a felony, upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than one year nor more than five years, or by imprisonment in the county jail not less than three months nor more than one year, or by fine not less than one hundred dollars nor more than five hundred dollars.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 2014.

Sec. 190. Person not punishable for omission when performed by another. That no person is punishable for an omission to perform an act where such act has been performed by another person acting in his behalf, and competent by law to perform it.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 2015.

Sec. 191. Misdemeanor, punishment for, when not otherwise prescribed. That whenever, by any law relating to said district, an act is declared to be a misdemeanor, and no punishment is prescribed therefor, the person committing the same, upon conviction thereof, shall be punished by imprisonment in the county jail not more than one year, or by fine not more than five hundred dollars.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 2016; State v. Gaunt, 13 Oreg., 115.

Sec. 192. Attempt to commit crime, punishment of. That if any person attempts to commit any crime, and in such attempt does any act toward the commission of such crime, but fails, or is prevented or intercepted in the perpetration thereof, such person, when no other provision is made by law for the punishment of such attempt, upon conviction thereof, shall be punished as follows:

First. If the crime so attempted be punishable by imprisonment in the penitentiary or county jail, the punishment for the attempt shall be by like imprisonment, as the case may be, for a term not more than half the longest period prescribed as a punishment for such crime.

Second. If the crime so attempted be punishable by fine, the punishment for the attempt shall be by fine not more than half the amount of the largest fine prescribed as a punishment for such crime.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 2017.

Sec. 193. Preceding section, how construed. That the section last preceding must not be construed to protect a person who, in attempting unsuccessfully to commit a crime, accomplishes another or different crime, whether greater or less in guilt, from suffering the punishment prescribed by law for the crime committed.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 2018.

Sec. 194. Computation of sentences. That when a person is sentenced to imprisonment in the penitentiary, his term of confinement therein commences from the day of his delivery at such prison to the proper officer thereof, and no time during which such person is voluntarily absent from such penitentiary

can be estimated or counted as a part of the term for which such person was sentenced.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 2019.

Sec. 195. **Treatment of convicts.** That a judgment of imprisonment in the penitentiary need only specify the duration and place of such confinement, and thereafter the manner of the confinement and the treatment and employment of the person so sentenced shall be regulated and governed by whatever law may be in force prescribing the discipline of the penitentiary wherein he is confined and the treatment and employment of persons sentenced to confinement therein.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 2020.

Sec. 196. **Judgment of imprisonment in penitentiary, effect of.** That a judgment of imprisonment in the penitentiary for any term less than for life suspends all civil rights of the person so sentenced, and forfeits all public offices and all private trusts, authority, or power during the term or duration of such imprisonment.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 2021.

Sec. 197. **Judgment of imprisonment for life.** That a person sentenced to imprisonment in the penitentiary for life is thereafter deemed civilly dead.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 2022.

Sec. 198. **Person of a convict under the protection of law.** That the person of a convict sentenced to imprisonment in the penitentiary is under the protection of the law, and any injury to his person not authorized by law is punishable in the same manner as if he was not convicted or sentenced.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 2023.

Sec. 199. **Sentences to penitentiary, how executed.** That whenever, in pursuance of the provisions of this Act, any person is sentenced to imprisonment in the penitentiary, such sentence may be executed by the confinement of such person in the building at Sitka, in said district, now used for that purpose, or in any other place of confinement within or without the said district that may be designated by the court, and his place of imprisonment may be changed at any time, and from time to time, upon the order of the Attorney-General.

1 Supp. R. S., p. 434, s. 10.

Sec. 200. **"Jail," definition of.** That whenever the words "jail" or "county jail" occur in this Act, the same shall be held to mean any house, building, structure, ship, or vessel used or suitable for the confinement of persons serving sentences for crime or awaiting trial therefor.

Sec. 201. **Sentences to county jail, how executed.** That the commencement and termination of a sentence of imprisonment in a county jail is to be ascertained by the rule prescribed in section one hundred and ninety-four of Title I, and the manner of such confinement and the treatment of the persons so sentenced shall be governed by whatever law may be in force prescribing the discipline of county jails: Provided, That the United States marshal for said district may, under such regulations as the Attorney-General may prescribe, employ or cause to be employed upon public works any or all persons sentenced to imprisonment in the jails or the penitentiary within said district: And provided further, That for the purpose of satisfying any judgment which may be given against a prisoner for any fine, or for the costs and disbursements in the proceedings against him, such prisoner shall be credited with two dollars for every day's labor performed by him in pursuance hereof.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 2024.

Sec. 202. Evidence given by a person may be used against him on a prosecution for perjury. That any section of this Act which declares that evidence obtained upon the examination of a person as a witness shall not be received against him in a criminal proceeding does not forbid such evidence being proved against such person upon any proceedings founded upon a charge of perjury committed by such person in such examination.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 2025.

Sec. 203. Conviction of crime not to work forfeiture of property. That no conviction of any person for crime works any forfeiture of any property, except in cases where the same is expressly provided by law; but in all cases of the commission or attempt to commit a felony the United States has a lien, from the time of such commission or attempt, upon all the property of the defendant for the purpose of satisfying any judgment which may be given against him for any fine on account thereof, and for the costs and disbursements in the proceedings against him for such crime.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 2026; Whitley v. Murphey, 5 Oreg., 328; State v. O'Neil, 7 Ibid., 141; State v. Munds, 7 Ibid., 80; Knobb v. Shaw, 5 Ibid., 482.

Sec. 204. Court to ascertain and impose punishments. That the several sections of this Act which declare certain crimes to be punishable as therein mentioned devolve a duty upon the court authorized to pass sentence to determine and impose the punishment prescribed; and whenever such punishment is left undetermined between certain limits or kinds, to determine the punishment to be inflicted in a particular case.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 2027.

Sec. 205. In prosecution for libel, truth may be given in evidence. That in all criminal prosecutions for libel the truth may be given in evidence; and if it shall appear to the jury that the matter charged as libelous is true and was published with good motives and justifiable ends, the defendant must be found not guilty.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 2028.

Sec. 206. Presumption in case of injurious publication. That an injurious publication is presumed to have been malicious if no justifiable end or good motive is shown for making it.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 2029.

Sec. 207. "Dwelling house," definition of, in relation to arson. That any building is deemed a "dwelling house" within the meaning of the sections of this Act defining the crime of arson any part of which has usually been occupied by any person lodging therein.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 2030.

Sec. 208. "Dwelling house," definition of, in relation to burglary. That any building is deemed a "dwelling house" within the meaning of the sections of this Act defining the crime of burglary any part of which has usually been occupied by any person lodging therein, and any structure joined to or immediately connected with such building.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 2031.

Sec. 209. Certain terms presumed to be used in a certain sense. That whenever the terms mentioned in the following sections are employed in this Act they are deemed to be employed in the senses hereafter affixed to them, except when a different sense plainly appears.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 2033.

Sec. 210. **"Signature," what it includes.** That the term "signature" includes any name, mark, or sign written with intent to authenticate any instrument or writing.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 2041.

Sec. 211. **"Writing" includes printing.** That the term "writing" includes printing.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 2042.

Sec. 212. **"Property" includes both real and personal.** That the term "property" includes both real and personal property.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 2043.

Sec. 213. **The term "person," what it includes.** That the word "person" includes corporations as well as natural persons; and where such word is used to designate the party whose property may be the subject of a crime, it includes said District, or any State, government, or country which may lawfully own any property in said District, and all municipal or public corporations and private corporations, as well as individuals.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 2044.

Sec. 214. **The singular number includes the plural.** That the singular number includes the plural, and the plural the singular.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 2045.

Sec. 215. **Masculine gender, what it comprehends.** That words used in the masculine gender comprehend as well the feminine and the neuter.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 2046.

Sec. 216. **Intent to defraud, what sufficient.** That whenever, by any provision of this Act, an intent to defraud is necessary to constitute a crime, it is sufficient if an intent appears to defraud any person, body politic, or corporation whatever.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 2047.

Sec. 217. **Criminal prosecution not to exclude other remedy or penalty.** That the omission to specify or affirm in this Act any liability to any damages, penalty, or forfeiture, or other remedy imposed by law, and allowed to be recovered or enforced in any civil action or proceeding, for any act or omission declared punishable herein, does not affect any right to recover or enforce the same.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 2048.

Sec. 218. **Common law of England adopted.** The common law of England as adopted and understood in the United States shall be in force in said District, except as modified by this Act.

Sec. 219. **Pending proceedings unaffected, etc.** That nothing herein contained shall apply to or in any way affect any proceeding or indictment now found or pending or that may be found for any offense committed before the passage of this Act.

PART TWO.

CODE OF CRIMINAL PROCEDURE.

TITLE II.

CHAPTER ONE.

PRELIMINARY PROVISIONS.

Sec.
1. Crimes and offenses, how prosecuted.
2. Definition of a crime or public offense.
3. Felonies, how prosecuted.
4. Criminal action defined.
5. Parties to a criminal action.

Sec. 1. Crimes and offenses, how prosecuted. That proceedings for the punishment and prevention of the crimes defined in Title I of this Act shall be conducted in the manner herein provided.

Sec. 2. Definition of a crime or public offense. That a crime or public offense is an act or omission forbidden by law, and punishable, upon conviction, by either of the following punishments:

First. Death;
Second. Imprisonment;
Third. Fine;
Fourth. Removal from office;
Fifth. Disqualification to hold and enjoy any office of honor, trust, or profit.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1200.

Sec. 3. Felonies, how prosecuted. That no person can be tried for the commission of a felony but upon the indictment of a grand jury.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1204.

Sec. 4. Criminal action defined. That the proceeding by which a person is tried and punished for the commission of a crime is known in this Act as a criminal action.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1205.

Sec. 5. Parties to a criminal action. That in a criminal action in the District of Alaska the United States is the plaintiff and the person prosecuted is the defendant.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1206.

CHAPTER TWO.

OF THE TIME OF COMMENCEMENT OF CRIMINAL ACTIONS.

Sec.
6. Criminal actions, when commenced.

Sec. 6. Criminal actions, when commenced. That criminal action must be commenced within the periods prescribed in the laws of the United States now in force or that may be hereinafter enacted.

R. S., c. 19; 19 Stat. L., c. 56; United States v. Cook, 17 Wall., 168; United States v. Irvine, 98 U. S., 450; United States v. Hirsch, 100 Ibid., 33; The "Clara," 102 Ibid., 201.

CHAPTER THREE.

OF THE JURISDICTION AND PLACE OF CRIMINAL ACTIONS.

Sec.
7. When crime commenced without, but consummated within, this District.
8. Murder or manslaughter committed by means used without the District.
9. When conviction or acquittal in another jurisdiction is a bar.

Sec. 7. When crime commenced without, but consummated within, this District. That when the commission of a crime commenced without said District is consummated within its boundaries, the defendant is liable to punishment therefor in said District though he were out of the District at the time of the commission of the crime charged, provided he consummated it in said District, through the intervention of an innocent or guilty agent, or by any means proceeding directly from himself.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1212.

Sec. 8. Murder or manslaughter committed by means used without the District. That when the crime of murder or manslaughter has been committed by means of a mortal wound given, or injury inflicted, or poison administered without said District, and the person so wounded, injured, or poisoned shall die thereof within said District, the person committing such crime is liable to punishment therefor in said District; and in such case, the action therefor may be commenced and tried in said District.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1213.

Sec. 9. When conviction or acquittal in another jurisdiction is a bar. That when an act declared to be a crime is within the jurisdiction of any State, county, or Territory, as well as of said District, a conviction or acquittal therefor in the former is a bar to a prosecution therefor in said District.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1219.

CHAPTER FOUR.

OF THE GRAND JURY.

Sec.
10. Grand jury, how selected and summoned.
11. Qualifications of grand jurors.
12. Who are exempt.

Sec. 10. Grand jury, how selected and summoned. That grand juries, to inquire of the crimes designated in title one of this Act, committed or triable within said District, shall be selected and summoned, and their proceedings shall be conducted, in the manner prescribed by the laws of the United States with respect to grand juries of the United States district and circuit courts, the true intent and meaning of this section being that but one grand jury shall be summoned in each division of the court to inquire into all offenses committed or triable within said District, as well those that are designated in title one of this Act as those that are defined in other laws of the United States.

R. S., ss. 808, 809, 810; 23 Stat. L., c. 52, s. 2.

Sec. 11. **Qualifications of grand jurors.** That a person is not competent to act as a juror who has been convicted of a felony nor unless he be a citizen of the United States, a male inhabitant of the District, over twenty-one years of age, and in possession of his natural faculties and of sound mind.

Laws Oreg., Oct. 24, 1882; Hill's Ann. Laws, s. 5947.

Sec. 12. **Who are exempt.** That a person is exempt from liability to act as a grand juror if he be—

First. A judicial officer;

Second. Any other civil officer of said District or of the United States whose duties are at the time inconsistent with his attendance as a juror;

Third. An attorney;

Fourth. A minister of the gospel or priest of any denomination;

Fifth. A teacher in a college, academy, or school;

Sixth. A practicing physician;

Seventh. An acting noncommissioned officer, musician, or private of a military organization, duly enrolled in the service of the United States or of said District.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 5948.

CHAPTER FIVE.

OF THE POWERS AND DUTIES OF THE GRAND JURY.

Sec.
13. Duty of grand jury.
14. May indict whether defendant has been held to answer or not.
15. When grand jury may present for opinion of court.
16. Presentment, duty of court in relation thereto.
17. Foremen may administer oaths to witnesses.
18. May order explanatory evidence to be produced.
19. What evidence will warrant indictment.
20. Grand juror must disclose his knowledge of commission of crime.
21. Grand jury to investigate prisons and offices.
22. To have access to prisons and records.
23. District attorney to present indictment, when.
24. Same subject.
25. District attorney must attend sittings. Who may be present.
26. Indictment not to be found on statement of juror unless sworn.
27. When grand juror bound to disclose testimony of a witness.
28. For what grand juror may be questioned.

Sec. 13. **Duty of grand jury.** That the grand jury have power, and it is their duty, to inquire into all crimes committed or triable within the jurisdiction of the court, and present them to the court, either by presentment or indictment, as provided in this Act.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1242.

Sec. 14. **May indict whether defendant has been held to answer or not.** That the grand jury may indict or present a person for a crime, upon sufficient evidence, whether such person has been held to answer for such crime or not.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1243.

Sec. 15. **When grand jury may present for opinion of court.** That when the grand jury are in doubt whether the facts, as shown by the evidence before them, constitute a crime in law, or whether the same has ceased to be punishable by reason of lapse of time or a former acquittal or conviction, they

may make a presentment of the facts to the court, without mentioning names of individuals, and ask the court to instruct them concerning the law arising thereon.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1244.

Sec. 16. **Presentment, duty of court in relation thereto.** That such presentment of the facts can not be found and presented to the court except as provided in the last preceding section, and when so found and presented the court shall give such instructions to the grand jury concerning the law of the case as it may think proper and necessary.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1245.

Sec. 17. **Foreman may administer oaths to witnesses.** That the foreman of the grand jury may administer an oath to any witness appearing before them.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1246.

Sec. 18. **May order explanatory evidence to be produced.** That the grand jury are not bound to hear evidence for the defendant, but it is their duty to weigh all the evidence submitted to them, and when they have reason to believe that other evidence within their reach will explain away the charge, they should order such evidence to be produced, and for that purpose may require the district attorney to issue process for the witnesses.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1248. Charge to Grand Jury, 2 Saw., 667, 670.

Sec. 19. **What evidence will warrant indictment.** That the grand jury ought to find an indictment when all the evidence before them, taken together, is such as in their judgment would, if unexplained or uncontradicted, warrant a conviction by the trial jury.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1249.

Sec. 20. **Grand juror must disclose his knowledge of commission of crime.** That if an individual grand juror know, or have reason to believe, that a crime has been committed which is triable by the court, he must disclose the same to his fellow jurors, who must thereupon investigate the same.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1250.

Sec. 21. **Grand jury to investigate prisons and offices.** That in addition to the power and duty above prescribed the grand jury have power and it is their duty to inquire—

First. Into the condition and management of every public prison in the District; and

Second. Into the condition and management of the offices pertaining to the courts of justice in the District.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1251.

Sec. 22. **To have access to prisons and records.** That they shall be entitled to free access at all reasonable times to the prisons and offices mentioned in the last preceding section, and also to the examination, without charge, of all public records in the District.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1252.

Sec. 23. **District attorney to present indictment, when.** That the district attorney must submit an indictment to the grand jury and cause the evidence in support thereof to be brought before them in case of every person held to answer a criminal charge in the court wherein such jury is formed.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1253.

Sec. 24. **Same subject.** That the district attorney may submit an indict-

ment to the grand jury in any case when he has good reason to believe that a crime has been committed which is triable by the court.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1254.

Sec. 25. **District attorney must attend sittings; who may be present.** That the district attorney, when required by the grand jury, must prepare indictments or presentments for them and attend their sittings to advise them in relation to their duties or to examine winesses in their presence; but no person other than the district attorney or a witness actually under examination can be allowed to be present during the sittings of the grand jury, nor either such attorney or witness when the grand jury are deliberating or voting upon a matter before them.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1255; State v. Justus, 11 Oreg., 178; State v. Whitney, 7 Ibid., 386.

Sec. 26. **Indictment not to be found on statement of juror unless sworn.** That an indictment or presentment must not be found upon the statement of a grand juror unless he be sworn and examined as a witness.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1256

Sec. 27. **When grand juror bound to disclose testimony of a witness.** That a member of a grand jury may be required by any court to disclose the testimony of a witness examined before such grand jury, for the purpose of ascertaining whether it is consistent with that given by the witness before the court, or to disclose the testimony given before such grand jury by any person upon a charge against such person for perjury, or upon his trial therefor.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1257; U. S. v. Charles, 2 Cranch C. C., 76; State v. Moran, 15 Oreg., 274.

Sec. 28. **For what grand juror may be questioned.** That a grand juror can not be questioned for anything he may say, or any vote he may give, while acting as such, in relation to any matter legally pending before the grand jury, except for a perjury, of which he may have been guilty in giving testimony before such jury.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1258.

CHAPTER SIX.

OF THE FINDING AND PRESENTATION OF THE INDICTMENT.

29. The indictment must be found by twelve jurors and indorsed by foreman.
30. Witnesses' names to be indorsed on indictment; when marked as prosecutor.
31. Indictment, how presented; a public record, and when not subject to public inspection.
32. Grand juror or officer not to disclose indictment when not subject to public inspection.
33. Proceeding when indictment not found "a true bill."
34. Indictment, effect of, when returned "not a true bill."
35. Presentment, definition of, and how made.

Sec. 29. **The indictment must be found by twelve jurors and indorsed by foreman.** That an indictment can not be found without the concurrence of at least twelve grand jurors; and when so found it must be indorsed "a true bill," and such indorsement signed by the foreman of the jury.

R. S., U. S., 1878, s. 1021; Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1259.

Sec. 30. Witnesses' names to be indorsed on indictment; when marked as prosecutor. That when an indictment is found the names of the witnesses examined before the grand jury must be inserted at the foot of the indictment, or indorsed thereon, before it is presented to the court; and if the indictment be for a misdemeanor only, and any witness has voluntarily appeared before the grand jury to complain of the defendant, his name must be marked as private prosecutor.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1260.

Sec. 31. Indictment, how presented; a public record, and when not subject to public inspection. That an indictment, when found by the grand jury, as prescribed in the two sections last preceding, must be presented by their foreman, in their presence, in open court, and filed with the clerk, and remain in his office as a public record; but if the defendant has not been held to answer the charge, neither the indictment nor any order or process in relation thereto must be inspected by any person other than the judge of the court or an officer thereof in discharge of a duty concerning the same until after the arrest of the defendant.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1261.

Sec. 32. Grand juror or officer not to disclose indictment when not subject to public inspection. That no grand juror or officer of the court shall disclose any fact concerning such indictment while it is not subject to public inspection; and the violation of this section, or the prohibitions of the section last preceding, is punishable as a contempt.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1262.

Sec. 33. Proceeding when indictment not found "a true bill." That when a person has been held to answer a criminal charge, and the indictment in relation thereto is not found "a true bill," as provided in section twenty-nine of this Title, it must be indorsed "not a true bill," which indorsement must be signed by the foreman, and presented to the court and filed with the clerk, and remain a public record; but in the case of an indictment not found "a true bill" against a person not so held, the same, together with the minutes of the evidence in relation thereto, must be destroyed by the grand jury.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1263.

Sec. 34. Indictment, effect of when returned "not a true bill." That when an indictment indorsed "not a true bill" has been presented in court and filed, the effect thereof is to dismiss the charge; and the same can not be again submitted to or inquired of by the grand jury, unless the court so order.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1264.

Sec. 35. Presentment, definition of, and how made. That a presentment of the facts must be made to the court by the foreman in the presence of the grand jury, and with the concurrence of five of their number; but being a mere informal statement of facts for the purpose of obtaining the advice of the court as to the law arising thereon, is not to be filed in the court or preserved beyond the sitting of the grand jury.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1265.

CHAPTER SEVEN.

OF THE INDICTMENT.

Sec.
36. Forms of pleading.
37. Indictment, the first pleading.
38. Indictment, what to contain.
39. Form of indictment.
40. Manner of stating act constituting the crime.
41. Indictment must be direct and certain as to what.
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43. Indictment must charge but one crime and in one form.
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45. Statement as to person injured or intended to be.
46. What description of animal sufficient.
47. Construction of words.
48. Words of statute need not be strictly pursued.
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51. Presumptions of law or matters judicially known need not be stated.
52. Pleading a judgment or proceeding before a court of special jurisdiction.
53. Private statute, how pleaded.
54. Pleading in indictment for libel.
55. Indictment for forgery when instrument has been withheld or destroyed by defendant.
56. Pleadings in indictment for perjury or subornation of perjury.
57. One or more defendants in same indictment may be convicted or acquitted.
58. Distinction between persons committing and aiding in commission of felony abrogated.
59. Accessory after fact may be tried before principal.
60. Indictment for compounding crime though the person committing the same has not been indicted.

Sec. 36. **Forms of pleading.** That the forms of pleading and the rules by which the sufficiency of pleadings is to be determined are those prescribed by this Act.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1266; State v. Dougherty, 4 Oreg., 200; State v. Howe, 27 Oreg., 145.

Sec. 37. **Indictment, the first pleading.** That the first pleading on the part of the United States is the indictment.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1267.

Sec. 38. **Indictment, what to contain.** That the indictment must contain—

First. The title of the action, specifying the name of the court to which the indictment is presented and the names of the parties.

Second. A statement of the facts constituting the offense in ordinary and concise language, without repetition, and in such manner as to enable a person of common understanding to know what is intended.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1268; State v. Steeves, 29 Oreg., 88, 89.

Sec. 39. **Form of indictment.** That the indictment may be substantially in the following form:

"THE UNITED STATES OF AMERICA
"V
"A B.
} District court for the District of Alaska, division No. .

"A B is accused by the grand jury of the District of Alaska, division No. , by this indictment, of the crime of " (here insert the name of the crime, if it have one, such as treason, murder, arson, manslaughter, or the like, or if it be a crime having no general name, such as libel, assault and battery, and the like, insert a brief description of it as given by law) "committed as follows:

"The said A B, on the day of , eighteen hundred and , in the District aforesaid" (here set forth the act charged as a crime according to the form adapted to the case, as provided in the next section).

"Dated at , in the District aforesaid, the day of , eighteen hundred and ."

(Signed) "C D, District Attorney."

(Indorsed:) "A true bill."

(Signed) "E F, Foreman of the Grand Jury."

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1269; State v. Wintzingerode, 9 Oreg., 153.

Sec. 40. **Manner of stating act constituting the crime.** That the manner of stating the act constituting the crime, as set forth in the appendix to this Act, is sufficient in all cases where the forms there given are applicable, and in other cases forms may be used as nearly similar as the nature of the case will permit.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1270; State v. Dougherty, 4 Oreg., 200; Frisbie v. State, 1 Oreg., 248; State v. Ah Sam, 14 Oreg., 437; State v. Carr, 6 Oreg., 133; State v. Spencer, 6 Oreg., 152; State v. Dodson, 4 Oreg., 64; State v. Doty, 5 Oreg., 491; State v. Kirk, 10 Oreg., 505; State v. Lee Lan Lam, 10 Oreg., 305; State v. Smith 11 Oreg., 205; State v. Horne, 12 Oreg., 133; State v. Packard, 4 Oreg., 157; State v. Brown, 7 Oreg., 186; State v. Lee Yan Yan, 10 Oreg., 365; State v. Ah Lee, 18 Oreg., 542; State v. Wright et al., 19 Oreg., 259.

Sec. 41. **Indictment must be direct and certain as to what.** That the indictment must be direct and certain as it regards:

First. The party charged;

Second. The crime charged; and

Third. The particular circumstances of the crime charged when they are necessary to constitute a complete crime.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1271.

Sec. 42. **Proceedings when defendant indicted by fictitious name.** That when a defendant is indicted by a fictitious or erroneous name, and in any stage of the proceedings his true name is discovered, it may be inserted in the subsequent proceedings, referring to the fact of his being indicted by the name mentioned in the indictment.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1272.

Sec. 43. **Indictment must charge but one crime and in one form.** That the indictment must charge but one crime, and in one form only; except that where the crime may be committed by use of different means the indictment may allege the means in the alternative.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1273; State v. Carr, 6 Oreg., 133; State v. Dale, 8 Oreg., 229; State v. Bergman, 6 Oreg., 341; State v. Jarvis, 18 Oreg., 362.

Sec. 44. **Time, when material, to be stated precisely; otherwise not.** That the precise time at which the crime was committed need not be stated in the indictment, but it may be alleged to have been committed at any time before the finding thereof, and within the time in which an action may be commenced therefor, except where time is a material ingredient in the crime.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1274; State v. Ah Sam, 14 Oreg., 347; State v. Cutting, 3 Oreg., 260; State v. Winslow, 3 Oreg., 337; State v. Ah Lee, 18 Oreg., 546.

Sec. 45. **Statement as to person injured or intended to be.** That when a crime involves the commission of or an attempt to commit a private injury, and is described with sufficient certainty in other respects to identify the

act, an erroneous allegation as to the person injured or intended to be injured is not material.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1275; State v. Lurch, 12 Oreg., 104.

Sec. 46. What description of animal sufficient. That when a crime involves the taking of or injury to an animal, the indictment is sufficiently certain in that respect if it describes the animal by the common name of its class.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1276.

Sec. 47. Construction of words. That the words used in an indictment must be construed in their usual acceptation in common language, except words and phrases defined by law, which are to be construed according to their legal meaning.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1277; State v. O'Neil, 21 Oreg., 170.

Sec. 48. Words of statute need not be strictly pursued. That words used in a statute to define a crime need not be strictly pursued in the indictment, but other words conveying the same meaning may be used.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1278; State v. Lee Yan Yam, 10 Oreg., 365.

Sec. 49. Indictment, when sufficient. That the indictment is sufficient if it can be understood therefrom:

First. That it is entitled in a court having authority to receive it, though the name of the court be not accurately stated;

Second. That it was found by a grand jury of the political division in which the court was held;

Third. That the defendant is named, or if his name can not be discovered, that he is described by a fictitious name, with the statement that his real name is to the jury unknown;

Fourth. That the crime was committed within the jurisdiction of the court;

Fifth. That the crime was committed at some time prior to the finding of the indictment, and within the time limited by law for the commencement of an action therefor;

Sixth. That the act or omission charged as the crime is clearly and distinctly set forth in ordinary and concise language, without repetition, and in such manner as to enable a person of common understanding to know what is intended;

Seventh. That the act or omission charged as the crime is stated with such a degree of certainty as to enable the court to pronounce judgment, upon a conviction, according to the right of the case.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1279.

Sec. 50. Indictment not sufficient for defect of form. That no indictment is insufficient, nor can the trial, judgment, or other proceedings thereon be affected by reason of a defect or imperfection in matter of form, which does not tend to the prejudice of the substantial rights of the defendant upon the merits.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1280.

Sec. 51. Presumptions of law or matters judicially known need not be stated. That neither presumptions of law nor matters of which judicial notice is taken need be stated in an indictment.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1281.

Sec. 52. Pleading a judgment or proceeding before a court of special jurisdiction. That in pleading a judgment or other determination of or proceed-

ing before a court or officer of special jurisdiction it is not necessary to state the facts conferring jurisdiction; but the judgment, determination, or proceeding may be stated to have been duly given or made. The facts conferring jurisdiction, however, must be established on the trial.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1282.

Sec. 53. **Private statute, how pleaded.** That in pleading a private statute, or right derived therefrom, it is sufficient to refer to the statute by its title and the day of its passage, and the court must thereupon take judicial notice thereof.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1283.

Sec. 54. **Pleading in indictment for libel.** That an indictment for libel need not set forth any extrinsic facts, for the purpose of showing the application to the party libeled of the defamatory matter on which the indictment is founded; but it is sufficient to state generally that the same was published concerning him; and the fact that it was so published must be established on the trial.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1284.

Sec. 55. **Indictment for forgery when instrument has been withheld or destroyed by defendant.** That when an instrument which is the subject of an indictment for forgery has been destroyed or withheld by the act or procurement of the defendant, and the fact of the destruction or withholding is alleged in the indictment and established on the trial, the misdescription of the instrument is immaterial.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1285.

Sec. 56. **Pleadings in indictment for perjury or subornation of perjury.** That in an indictment for perjury or subornation of perjury, it is sufficient to set forth the substance of the controversy or matter in respect to which the crime was committed, and in what court, or before whom, the oath alleged to be false was taken, and that the court or person before whom it was taken had authority to administer it, with proper allegations of the falsity of the matter on which the perjury is assigned; but the indictment need not set forth the pleadings, record, or proceedings with which the oath is connected, nor the commission or authority of the court or person before whom the perjury was committed.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1286; State v. Kalyton, 29 Oreg., 375; State v. Witham, 6 Oreg., 366; State v. Spencer, 6 Oreg., 152.

Sec. 57. **One or more defendants in same indictment may be convicted or acquitted.** That upon an indictment against several defendants, any one or more may be convicted or acquitted.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1287.

Sec. 58. **Distinction between persons committing and aiding in commission of felony abrogated.** That the distinction between an accessory before the fact and a principal, and between principals in the first and second degree in cases of felony, is abrogated, and all persons concerned in the commission of a felony, whether they directly commit the act constituting the crime, or aid and abet in its commission, though not present, must be indicted, tried, and punished as principals, as in the case of a misdemeanor.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1289; State v. Kirk, 10 Oreg., 505.

Sec. 59. **Accessory after fact may be tried before principal.** That an ac-

cessory after the fact to the commission of a felony may be indicted, tried, and punished, though the principal felon be neither indicted nor tried.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1290.

Sec. 60. Indictment for compounding crime though the person committing the same has not been indicted. That a person may be indicted for having, with the knowledge of the commission of a crime, taken money or property of another, or a gratuity or a reward, or an engagement or promise thereof, upon an agreement or understanding, express or implied, to compound or conceal the crime, or to abstain from a prosecution therefor, or to withhold any evidence thereof, though the person guilty of the original crime has not been indicted or tried.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1291.

CHAPTER EIGHT.

OF THE ARRAIGNMENT OF THE DEFENDANT.

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67. Time allowed the defendant to answer the indictment.
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69. If defendant refuse to plead, plea of not guilty to be entered.
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71. If defendant in custody, may be brought in by order.
72. If discharged on bail or deposit, bench warrant may issue.
73. Bench warrant, by whom and how issued.
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75. Warrant to issue on application of district attorney.
76. Bench warrant, form of.
77. When defendant must be taken before magistrate.
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79. Same subject.
80. Court may order defendant into custody unless increased bail be given.
81. Defendant, if present, to be committed; if not, bench warrant to issue.

Sec. 61. Defendant, when and where arraigned. That when the indictment has been filed, the defendant, if he has been arrested, or as soon thereafter as he may be, must be arraigned thereon before the court in which it is found.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1292.

Sec. 62. Arraignment, how made. That the arraignment must be made by the court, or by the clerk or the district attorney under its direction, and consists in reading the indictment to the defendant, and delivering to him a copy thereof and the indorsements thereon, including the list of witnesses indorsed on it or appended thereto, and asking him whether he pleads guilty or not guilty to the indictment.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1293.

Sec. 63. Defendant to be informed that he is entitled to counsel. That if the defendant appear for arraignment without counsel, he must be informed by the court that it is his right to have counsel before being arraigned, and must be asked if he desires the aid of counsel.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1294.

Sec. 64. Defendant to be requested to declare his true name. That when the defendant is arraigned, he must be informed that if the name by which he is indicted be not his true name he must then declare his true name, or be proceeded against by the name in the indictment.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1295.

Sec. 65. Proceeding if the defendant do not give his true name. That if the defendant give no other name, the court may proceed accordingly.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1296.

Sec. 66. Proceeding when defendant gives another name. That if the defendant allege that another name is his true name, the court must direct an entry thereof to be made in its journal and the subsequent proceedings on the indictment may be had against him by that name, referring also to the name by which he is indicted.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1297.

Sec. 67. Time allowed the defendant to answer the indictment. That if, on the arraignment, the defendant require it, he must be allowed until the next day, or such further time as the court may deem reasonable, to answer the indictment.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1298.

Sec. 68. How defendant may answer indictment. That if the defendant do not require time as provided in the last section, or if he do, then on the next day, or at such further day as the court may have allowed him, he may, in answer to the arraignment, either move the court to set aside the indictment or may demur or plead thereto.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1299; State v. Pool, 20 Oreg., 152.

Sec. 69. If defendant refuse to plead, plea of not guilty to be entered. That if the defendant, within the time required, refuse to demur or plead to the indictment, the court must direct that a plea of not guilty be entered for him.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1300.

Sec. 70. Personal appearance at arraignment, when necessary. That when the indictment is for a felony the defendant must be personally present at the arraignment, but if it be for a misdemeanor only, and the defendant has been held to answer to the charge, his personal appearance is unnecessary, and he may appear by counsel.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1301.

Sec. 71. If defendant in custody, may be brought in by order. That when the personal appearance of the defendant is necessary, if he be in custody, the court may direct the proper officer to bring him before it to be arraigned, and the officer must do so accordingly.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1302.

Sec. 72. If discharged on bail or deposit, bench warrant may issue. That if the defendant has given bail, or has deposited money in lieu thereof, and does not appear to be arraigned when his personal appearance is necessary, therefor, the court, in addition to the forfeiture of the undertaking of bail or of the money deposited in lieu thereof, may order the clerk to issue a bench warrant for his arrest.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1303.

Sec. 73. Bench warrant, by whom and how issued. That when an indictment is filed in court, if the defendant has not been arrested and held to answer the charge, unless he voluntarily appear for arraignment the court must order the clerk to issue a bench warrant for his arrest.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1304.

Sec. 74. If crime bailable, indorsement on. That if the crime charged in the indictment be bailable, the court, upon directing the bench warrant to issue, must fix the amount of bail, and the clerk must indorse the same upon such warrant and sign it, substantially as follows: "The defendant is to be admitted to bail in the sum of dollars."

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1305.

Sec. 75. Warrant to issue on application of district attorney. That at any time after the making of the order for the bench warrant, the clerk, on the application of the district attorney, must issue such warrant as by order directed, whether the court be sitting or not.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1306.

Sec. 76. Bench warrant, form of. That the bench warrant upon the indictment must be substantially in the following form:

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1307.

Division No. .

"District court for the District of Alaska. In the name of the United States of America.

"To the United States marshal for the District of Alaska, or any deputy, greeting:

"An indictment having been found on the day of , hundred and , in the district court for the District aforesaid, division No. , charging A B with the crime of (designating it generally), this is to command you forthwith to arrest the defendant, and bring him before such court to answer the indictment, or, if the court have adjourned for the term, that you detain him in your custody. By order of the court.

"Witness my hand and seal of said district court, affixed at , this day of , hundred and .

[L. S.] "C D, Clerk."

Sec. 77. When defendant must be taken before magistrate. That when the crime is bailable, and the defendant requires it, the officer making the arrest must take him before the court if in session, and if the court is not in session, before a commissioner for the purpose of putting in bail, and thereupon such commissioner must proceed in respect thereto according to the provisions of chapter twenty-two of this Act, entitled "Bail."

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1309.

Sec. 78. Proceeding on putting in bail. That if bail be taken, the court or the commissioner must make the order prescribed by section two hundred and twenty-three of this Title, and deliver it to the officer, who must thereupon discharge the defendant, and without delay return the warrant and order to the clerk of the court at which the defendant is required to appear.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1310.

Sec. 79. Same subject. That if the bail be not allowed, the officer must take the defendant before the court or commit him to the custody of the jailer, according to the command of the warrant.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1311.

Sec. 80. Court may order defendant into custody unless increased bail be given. That although the defendant has put in bail to answer the charge or the indictment, the court may, at any time after the indictment is found, order the defendant into actual custody, unless he give bail with new sureties or in an increased amount, to be specified in the order.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1312.

Sec. 81. Defendant, if present, to be committed; if not, bench warrant to issue. That if the defendant be present when the order is made, he must be forthwith committed accordingly; but if he be not present, a bench warrant must be issued and proceeded upon in the manner provided in this chapter.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1313.

CHAPTER NINE.

OF SETTING ASIDE THE INDICTMENT.

Sec.
82. Indictment, when set aside on motion.
83. Motion to set aside, when made and heard.
84. Motion, if granted, proceeding thereon.
85. Effect of order for resubmission.
86. New indictment in such case, when to be found.
87. Indictment, order to set aside no bar to further prosecution.

Sec. 82. Indictment, when set aside on motion. That the indictment must be set aside by the court, upon the motion of the defendant, in either of the following cases:

First. When it is not found, indorsed, and presented as prescribed in chapter six of title two of this Act;

Second. When the names of the witnesses examined before the grand jury are not inserted at the foot of the indictment or indorsed thereon.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1314; State v. Pool, 20 Oreg., 151.

Sec. 83. Motion to set aside, when made and heard. That the motion to set aside the indictment must be made and heard at the time of the arraignment, unless for good cause the court postpone the hearing to a future time, and if not so made, the defendant is precluded from afterwards taking the objections mentioned in the section last preceding.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1315; State v. Reinhart, 26 Oreg., 466.

Sec. 84. Motion, if granted, proceeding thereon. That if the motion be allowed, the court must order that the defendant, if in custody, be discharged therefrom; or if he have given bail or deposited money in lieu thereof, that his bail be exonerated or his money refunded to him, unless it direct that the case be resubmitted to the same or another grand jury.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1316.

Sec. 85. Effect of order for resubmission. That if the court direct that the case be resubmitted, the defendant, if then in custody, must so remain, unless he be admitted to bail; or if he have already given bail, or deposited money in lieu thereof, such bail or money is answerable for the appearance of the defendant to answer a new indictment, if one be found.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1317.

Sec. 86. New indictment in such case, when to be found. That unless a

new indictment be found before the next grand jury is discharged, the court must, on the discharge of such grand jury, make the order prescribed by section eighty-four of this Title.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1318.

Sec. 87. Indictment, order to set aside no bar to further prosecution. That an order to set aside an indictment, as provided in this chapter, is no bar to a future prosecution for the same crime.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1319.

CHAPTER TEN.

OF THE DEMURRER.

Sec.
88. Demurrer or plea only pleading on part of defendant.
89. Demurrer or plea, when put in.
90. Demurrer, grounds of.
91. Demurrer, how put in and its form.
92. Demurrer, when heard.
93. Judgment on demurrer.
94. Proceeding when demurrer allowed.
95. If resubmission not ordered, defendant to be discharged.
96. Proceeding if resubmission ordered.
97. Proceeding if demurrer be disallowed.
98. What objections may be taken at the trial or in arrest of judgment.

Sec. 88. Demurrer or plea only pleading on part of defendant. That the only pleading on the part of the defendant is either a demurrer or plea.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1320.

Sec. 89. Demurrer of plea, when put in. That both the demurrer and plea must be put in, in open court, either at the time of the arraignment or at such other time as may be allowed to defendant for that purpose.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1321.

Sec. 90. Demurrer, grounds of. That the defendant may demur to the indictment when it appears upon the face thereof either—

First. That the grand jury by which it was found had no legal authority to inquire into the crime charged, because the same is not triable within the District.

Second. That it does not substantially conform to the requirements of chapter seven of title two of this Act.

Third. That more than one crime is charged in the indictment.

Fourth. That the facts stated do not constitute a crime.

Fifth. That the indictment contains any matter which, if true, would constitute a legal justification or excuse of the crime charged, or other legal bar to the action.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1322; State v. Whitney, 7 Oreg., 386; State v. Jarvis, 18 Oreg., 362; State v. Bloodsworth, 25 Oreg., 84.

Sec. 91. Demurrer, how put in and its form. That the demurrer must be in writing, signed either by the defendant or his attorney, and filed. It must distinctly specify the ground of objection to the indictment, or it may be disregarded.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1323.

Sec. 92. Demurrer, when heard. That upon the demurrer being filed, the objections presented thereby must be heard, either immediately or at such time as the court may direct.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1324.

Sec. 93. Judgment on demurrer. That upon considering the demurrer, the court must give judgment, either allowing or disallowing it, and an entry to that effect must be entered in the journal.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1325.

Sec. 94. Proceeding when demurrer allowed. That if the demurrer be allowed, the judgment is final upon the indictment demurred to, and is a bar to another action for the same crime, unless the court, being of opinion that the objection on which the demurrer is allowed may be avoided in a new indictment, direct the case to be resubmitted to the same or another grand jury.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1326.

Sec. 95. If resubmission not ordered, defendant to be discharged. That if the court do not direct the case to be resubmitted, the defendant, if in custody, must be discharged, or if admitted to bail his bail is exonerated, or if he have deposited money in lieu thereof the money must be refunded to him.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1327.

Sec. 96. Proceeding if resubmission ordered. That if the court direct the case to be resubmitted, the same proceedings must be had thereon as are prescribed in sections eighty-five and eighty-six of this Title.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1328.

Sec. 97. Proceeding if demurrer be disallowed. That if the demurrer be disallowed, the court must permit the defendant, at his election, to plead, which he must do forthwith, or at such time as the court may allow; but if he do not plead, judgment must be given against him.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1329.

Sec. 98. What objections may be taken at the trial or in arrest of judgment. That when the objections mentioned in section ninety-three appear upon the face of the indictment, they can only be taken by demurrer, except that the objection to the jurisdiction of the court over the subject of the indictment, or that the facts stated do not constitute a crime, may be taken at the trial, under the plea of not guilty and in arrest of judgment.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1330; State v. Doty, 5 Oreg., 49; State v. Dougherty, 4 Oreg., 200; State v. Bruce, 5 Oreg., 68; State v. Jarvis, 18 Oreg., 362; State v. Bloodsworth, 25 Oreg., 84.

CHAPTER ELEVEN.

OF PLEAS TO THE INDICTMENT.

Sec.
99. The different kinds of pleas.
100. Plea, how put in, and its form.
101. Plea of guilty must be put in in person, except in case of corporation.
102. Plea of guilty, when and how withdrawn.
103. Plea of not guilty, what it controverts.
104. Plea of not guilty, what may be given in evidence under it.
105. What is not deemed a former acquittal.
106. What is deemed a former acquittal.
107. Conviction or acquittal for crime consisting of different degrees, when a bar to another indictment.

Sec. 99. The different kinds of pleas. That there are three kinds of pleas to an indictment; a plea of—

First. Guilty.

Second. Not guilty.

Third. A former judgment of conviction or acquittal of the crime charged, which may be pleaded either with or without the plea of not guilty.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1331.

Sec. 100. Plea, how put in and its form. That every plea must be oral, and must be entered on the journal of the court in substantially the following form:

First. If the defendant pleads guilty: "The defendant pleads that he is guilty of the crime charged in this indictment."

Second. If he pleads not guilty: "The defendant pleads that he is not guilty of the crime charged in this indictment."

Third. If he pleads a former conviction or acquittal: "The defendant pleads that he has already been convicted (or acquitted, as the case may be) of the crime charged in this indictment by the judgment of the court of (naming it), rendered at (naming the place), on the day of , eighteen hundred and "

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1332.

Sec. 101. Plea of guilty must be put in person, except in case of corporation. That a plea of guilty must in all cases be put in by the defendant in person, in open court, unless upon an indictment against a corporation, in which case it may be put in by counsel.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1333; U. S. v. Wilson, 7 Pet., 150.

Sec. 102. Plea of guilty, when and how withdrawn. That the court may at any time before judgment, upon a plea of guilty, permit it to be withdrawn and a plea of not guilty substituted therefor.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1334.

Sec. 103. Plea of not guilty, what it controverts. That the plea of not guilty controverts and is a denial of every material allegation in the indictment.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1335.

Sec. 104. Plea of not guilty, what may be given in evidence under it. That all matters of fact tending to establish a defense to the charge in the indictment, other than those specified in the third subdivision of section ninety-nine of this Title, may be given in evidence under the plea of not guilty.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1336.

Sec. 105. What is not deemed a former acquittal. That if the defendant were formerly acquitted on the ground of a variance between the indictment and the proof, or the indictment were dismissed upon a demurrer to its form or substance, or discharged for want of prosecution, without a judgment of acquittal or in bar of another prosecution, it is not an acquittal of the same crime.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1337.

Sec. 106. What is deemed a former acquittal. That when, however, the defendant was acquitted on the merits, he is deemed acquitted of the same crime, notwithstanding a defect in form or substance in the indictment on which he was acquitted.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1338; State v. Littschke, 27 Oreg., 189.

Sec. 107. Conviction or acquittal for crime consisting of different degrees, when a bar to another indictment. That when the defendant shall have been convicted or acquitted upon the indictment for a crime consisting of different degrees, such conviction or acquittal is a bar to another indictment for the

crime charged in the former, or for any inferior degree of that crime, or for an attempt to commit the same, or for an offense necessarily included therein, of which he might have been convicted under that indictment, as provided in sections one hundred and forty-six and one hundred and forty-seven of this Title.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1339; State v. Stewart, 11 Oreg., 238; State v. McCormick, 8 Oreg., 236; U. S. v. Barnhart, 10 Sawy., 491; State v. Stewart, 11 Oreg., 52; State v. Steeves, 29 Oreg., 107-8.

CHAPTER TWELVE.

OF ISSUES OF LAW AND FACT.

Sec.
108. Issue of fact, definition of.
109. Issue of law, definition of.
110. Issue of law or fact, how tried.
111. When defendant must appear in person on trial.

Sec. 108. **Issue of fact, definition of.** That an issue of fact arises—

First. Upon a plea of not guilty; or,

Second. Upon a plea of former conviction or acquittal of the same crime.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1340.

Sec. 109. **Issue of law, definition of.** That an issue of law arises upon a demurrer to the indictment.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1341.

Sec. 110. **Issue of law or fact, how tried.** That an issue of law must be tried by the court, and an issue of fact by jury, of the political division in which the action is triable.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1342.

Sec. 111. **When defendant must appear in person on trial.** That if the indictment be for a misdemeanor, the trial may be had in the absence of the defendant, if he appear by counsel; but if it be for a felony, he must be present in person.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1343; State v. Abrams, 11 Oreg., 169; State v. Shores, 4 Oreg., 198; State v. Smith, 11 Oreg., 205.

CHAPTER THIRTEEN.

OF THE POSTPONEMENT OF TRIAL.

Sec.
112. Postponement of trial, when and how allowed.
113. May be refused unless party consent to take deposition of witness.
114. Order for taking the deposition.
115. Deposition to be filed, and when may be read.
116. When court may order indictment discharged for want of prosecution.
117. Effect of such discharge.
118. Proceeding upon discharge in relation to bail.

Sec. 112. **Postponement of trial, when and how allowed.** That when an indictment is at issue upon a question of fact, and before the same is called for trial, the court may, upon sufficient cause shown by such affidavits as

the defendan. may produce, or the statement of the district attorney, direct the trial to be postponed to another day in the same term or to another term; and all affidavits and papers read on either side upon the application must be first filed with the clerk.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1344.

Sec. 113. **May be refused unless party consents to take deposition of witness.** That when an application is made for the postponement of a trial, the court may, in its discretion and in the furtherance of justice, require as a condition precedent to granting the same that the party applying therefor consent that the deposition of a witness or witnesses present may be taken and read on the trial of the case, and unless such consent be given may refuse to allow such postponement for any cause.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1345; State v. Bowker, 26 Oreg., 313.

Sec. 114. **Order for taking the deposition.** That when such consent is given, the court must make an order appointing some proper time and place for taking the deposition of such witness, either by the judge thereof or before some suitable person to be named therein as commissioner, upon either written or oral interrogatories.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1346.

Sec. 115. **Deposition to be filed, and when may be read.** That upon the making of the order provided in the last preceding section, the deposition must be taken and filed in court, and may be read on the trial of the case, in like manner and with like effect and subject to the same objections as in civil cases.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1347.

Sec. 116. **When court may order indictment discharged for want of prosecution.** That if, when the indictment is called for trial, the defendant appear for trial, and the district attorney is not ready and does not show any sufficient cause for postponing the trial, the court must order the indictment to be discharged, unless, being of opinion that the public interests require the indictment to be retained for trial, it direct it to be so retained.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1348.

Sec. 117. **Effect of such discharge.** That if the court order the indictment to be discharged, the order is not a bar to another action for the same crime, unless the court so direct; and if the court so direct, judgment of acquittal must be entered.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1349.

Sec. 118. **Proceeding upon discharge in relation to bail.** That if, upon the discharge of the indictment, the court give a judgment of acquittal, the same proceedings must be had thereon, in relation to the custody of the defendant, his bail or money deposited in lieu thereof, as are prescribed in sections ninety-five of this Title.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1350.

CHAPTER FOURTEEN.

OF THE FORMATION OF THE TRIAL JURY.

Sec.
119. Trial jurors, how selected.
120. Formation of jury.
121. Challenge to the panel.
122. Peremptory challenges defined.
123. Challenge for cause defined.
124. General causes of challenge.
125. Particular causes of challenge.
126. Challenge for implied bias.
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128. Exemption from service on jury.
129. Challenges, how and when taken.
130. Order of taking challenges.
131. Trial of challenge.
132. Proceedings and evidence on trial of challenge.
133. Challenge may be oral.
134. Challenges, by whom and how taken.
135. Peremptory challenges, number of.
136. Oath of jury.

Sec. 119. **Trial jurors, how selected.** That jurors for the trial of persons accused of any of the crimes defined in the laws of the United States applicable to the District of Alaska, as hereby revised and codified, and for the trial of issues of fact in civil actions, shall be selected and summoned in the manner prescribed by the laws of the United States with respect to jurors of the United States district and circuit courts, and shall have the same qualifications and be entitled to the same exemptions as are provided in chapter four, title two of this Act in the case of grand juries.

R. S. U. S., 1878, ss. 808, 809, 810; 23 Stat. L., c. 52, s. 2.

Sec. 120. **Formation of jury.** That trial juries shall be formed as follows: When the action is called for trial the clerk shall draw from the trial-jury box of the court, one by one, the ballots containing the names of the jurors until the jury is completed or the ballots are exhausted. If the ballots become exhausted before the jury is complete, the marshal, under the direction of the court, shall summon from the bystanders or the body of the District so many qualified persons as may be necessary to complete the jury. Whenever, as in this section provided, the marshal shall summon more than one person at a time from the bystanders or the body of the District, he shall return a list of the persons so summoned to the clerk. The clerk shall write the names of such persons upon separate ballots and deposit the same in the trial-jury box, and then draw such ballots therefrom, as in the case of the panel of trial jurors for the term. The jury shall consist of twelve persons, unless in trials for misdemeanors the parties consent to a less number. Such consent shall be entered in the journal.

Laws Oreg., Oct. 11, 1892; Hill's Ann. Laws, s. 180.

Sec. 121. **Challenge to the panel.** That no challenge shall be made or allowed to the panel. A challenge is an objection to a particular juror, and may be either

First. Peremptory; or,

Second. For cause.

Laws Oreg., Oct. 11, 1892; Hill's Ann. Laws, s. 181; Fitzhugh v. State, 2 Oreg., 227; State v. Dale, 8 Oreg., 229.

Sec. 122. **Peremptory challenges defined.** That a peremptory challenge is an objection to a juror for which no reason need be given, but upon which the court shall exclude him.

Laws Oreg., Oct. 11, 1892; Hill's Ann. Laws, s. 182.

Sec. 123. **Challenge for cause defined.** That a challenge for cause is an objection to a juror, and may be either

First. General; that the juror is disqualified from serving in any action; or,

Second. Particular; that he is disqualified from serving in the action on trial.

Laws Oreg., Oct. 11, 1892; Hill's Ann. Laws, s. 183.

Sec. 124. General causes of challenge. That general causes of challenge are:

First. A conviction for felony;

Second. A want of any of the qualifications prescribed by law for a juror;

Third. Unsoundness of mind, or such defect in the faculties of the mind or organs of the body as renders him incapable of performing the duties of juror.

Laws Oreg., Oct. 11, 1892; Hill's Ann. Laws, s. 184; State v. McDonald, 8 Oreg., 113; State v. Powers, 10 Oreg., 145.

Sec. 125. Particular causes of challenge. That particular causes of challenge are of two kinds—

First. For such bias as, when the existence of the facts is ascertained, in judgment of law disqualifies the juror, and which is known in this code as implied bias.

Second. For the existence of a state of mind on the part of a juror in reference to the action or to either party which satisfies the trier, in the exercise of a sound discretion, that he can not try the issue impartially and without prejudice to the substantial rights of the party challenging, and which is known in this code as actual bias.

Laws Oreg., Oct 11, 1892; Hill's Ann. Laws, s. 185; State v. Tom, 8 Oreg., 177; Kumli v. S. Pac. Co., 21 Ibid., 505; State v. Ingram, 23 Ibid., 434.

Sec. 126. Challenge for implied bias. That a challenge for implied bias may be taken for any of the following causes, and for no other:

First. Consanguinity or affinity within the fourth degree to the person alleged to be injured by the crime charged in the indictment, or the person indorsed thereon as the prosecutor, or to the defendant.

Second. Standing in the relation of guardian and ward, attorney and client, master and servant, or landlord and tenant, with the defendant, or the person alleged to be injured by the crime charged in the indictment, or indorsed thereon as prosecutor, or being a member of the family, a partner in business with or in the employment on wages for either of such persons, or being surety or bail in the action or otherwise for the defendant.

Third. Having served on the grand jury which found the indictment, or on a coroner's jury which inquired into the death of a person whose death is the subject of the indictment.

Fourth. Having been one of a jury formerly sworn in the same action, and whose verdict was set aside, or which was discharged without a verdict, after the cause was submitted to it.

Fifth. Having served as a juror in a civil action, suit, or proceeding brought against the defendant for substantially the same act charged as a crime.

Sixth. If the offense charged be punishable with death, the entertaining of such conscientious opinions as would preclude a person from finding the defendant guilty; in which case he shall neither be permitted nor compelled to serve as a juror.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1352.

Sec. 127. Challenge for actual bias. That a challenge for actual bias may be taken for the cause mentioned in the second subdivision of section one hundred and twenty-eight. But on the trial of such challenge, although it should appear that the juror challenged has formed or expressed an opinion

upon the merits of the cause from what he may have heard or read, such opinion shall not of itself be sufficient to sustain the challenge, but the court must be satisfied, from all the circumstances, that the juror can not disregard such opinion and try the issue impartially.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 187; U. S. v. Hamway, 2 Wall., Jr., 139; State v. Tom., 8 Oreg., 177; State v. Saunders, 14 Ibid., 300; Ford v. Umatilla Co., 15 Ibid., 313; State v. Kelly, 28 Ibid., 225; State v. Brown, Ibid., 147.

Sec. 128. **Exemption from service on jury.** That an exemption from service on a jury shall not be cause of challenge, but the privilege of the person exempted.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 188.

Sec. 129. **Challenges, how and when taken.** That all challenges shall be taken first by the defendant and then by the plaintiff, and the defendant shall exhaust his challenges to a particular juror before the plaintiff begins. All challenges shall be taken to each juror as he is drawn and appears, and before another juror is drawn, unless the court, for good cause shown, shall permit a challenge to be taken afterwards, and before the number of the jury is completed.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 190; State v. McDonald, 8 Oreg., 113; Garrison v. Portland, 2 Ibid., 123.

Sec. 130. **Order of taking challenges.** That the challenge of either party shall be taken separately, in the following order, including in each challenge all the causes of challenge belonging to the same class:

First. For general disqualification.

Second. For implied bias.

Third. For actual bias.

Fourth. Peremptory; but either party may take peremptory challenge at any time before his right of challenge ceases.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 191; Garrison v. Portland, 2 Oreg., 123.

Sec. 131. **Trial of challenge.** That the challenge may be excepted to by the adverse party of insufficiency, and if so the court shall determine the sufficiency thereof, assuming the facts alleged therein to be true. The challenge may be denied by the adverse party, and if so the court shall try the issue and determine the law and the fact.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 192; State v. Tom, 8 Oreg., 177; Hayden v. Long, 8 Ibid., 244.

Sec. 132. **Proceedings and evidence on trial of challenge.** That upon the trial of a challenge the rules of evidence applicable to testimony offered upon the trial of an ordinary issue of fact shall govern. The juror challenged, or any other person otherwise competent, may be examined as a witness by either party. If a challenge be determined to be sufficient or found to be true, as the case may be, it shall be allowed, and the juror to whom it was taken excluded. But if determined or found otherwise, it shall be disallowed.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 193.

Sec. 133. **Challenge may be oral.** That the challenge, the exception, and the denial may be made orally. The judge of the court shall note the same, upon his minutes, and the substance of the testimony on either side.

Laws Oreg., Oct. 19, 1864; Hill's Ann Laws, s. 194.

Sec. 134. **Challenge, by whom and how taken.** All challenges, whether peremptory or for cause, may be taken by the United States or defendant, but when several defendants are tried together they can not sever their challenges, but must join therein.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1353.

Sec. 135. Peremptory challenges, number of. That if the crime charged in the indictment be punishable with death, the defendant shall be entitled to twenty and the United States to ten peremptory challenges. On the trial of any other felony, the defendant shall be entitled to ten and the United States to five peremptory challenges, and in all other cases each party shall be entitled to three peremptory challenges.

R. S. U. S., 1878, s. 819.

Sec. 136. Oath of jury. That as soon as the number of the jury has been completed, an oath or affirmation shall be administered to the jurors in substance, that they and each of them will well and truly try the matter in issue between the plaintiff and defendant, and a true verdict give according to the law and evidence as given them on the trial.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 195.

CHAPTER FIFTEEN.

OF THE CONDUCT OF THE TRIAL AND MISCELLANEOUS PROVISIONS RELATING THERETO.

Sec.
137. Order of proceedings on trial.
138. Conduct of jury after case is submitted.
139. For what cause court may discharge jury.
140. Jury may be polled.
141. When jury to ascertain value of property.
142. Insanity must be proven; intoxication not to be deemed insanity.
143. Defendant to be convicted of the lowest degree in case of doubt.
144. When defendants jointly indicted entitled to separate trial.
145. When one of several defendants may be discharged as a witness for the State.
146. When one may be discharged to be a witness for defendant.
147. Effect of such discharge.
148. Law of evidence in criminal cases.
149. Defendant can be witness.
150. Husband or wife can be witness for or against each other in certain cases.
151. Evidence in criminal actions to be given orally, except.
152. Error in proceedings not material, unless it prejudice substantial rights of defendant.
153. Testimony of accomplice must be corroborated.
154. Evidence on trial for false pretenses.
155. Evidence of female abducted or seduced must be corroborated.
156. Court to decide questions of law; knowledge of the court.
157. Jury to receive the law from the court and to decide the facts.
158. Defendant may be committed after appearance.

Sec. 137. Order of proceedings on trial. That after the jury is impaneled and sworn, the trial shall proceed in the following order:

First. A counsel for the United States must state the case of the prosecution, and may briefly state the evidence by which he expects to sustain it.

Bates's Ann. Ohio Statutes, s. 7300.

Second. The defendant, or his counsel, must then state his defense, and may briefly state the evidence he expects to offer in support of it.

Adams v. State, 25 Ohio St., 584-586; Webb v. State, 29 Ohio St., 351.

Third. The United States must first produce its evidence; and the defendant will then produce his evidence.

Fourth. The United States will then be confined to rebutting evidence, unless the court, for good reasons, in furtherance of justice, permit it to offer evidence in chief.

Hanson v. State, 43 Ohio St., 376; State v. McHugh, 42 Ibid., 154; Bolen v. State, 26 Ibid., 371; Stewart v. State, 1 Ibid., 66; Adams v. State, 29 Ibid., 412; Callahan v. State, 21 Ibid., 306.

Fifth. When the evidence is concluded, either party may request instructions to the jury on points of law, which shall be given or refused by the court; which instructions shall be reduced to writing if either party request it.

Goodenow v. Tappen, 1 Ohio St., 60; Weaver v. State, 24 Ibid., 584.

Sixth. When the evidence is concluded, unless the case be submitted without argument, the counsel for the United States shall commence, the defendant or his counsel follow, and the counsel for the United States conclude, the argument to the jury.

Blackburn v. State, 23 Ohio St., 146.

Seventh. The court, after the argument is concluded, shall immediately, and before proceeding with other business, charge the jury; which charge, or any charge given after the conclusion of the argument, shall be reduced to writing by the court, if either party request it before the argument of the trial is commenced; such charge or charges, or any other charge or instructions provided for in this section, when so written and given, shall in no case be orally qualified, modified, or in any manner explained to the jury by the court; and all written charges and instructions shall be taken by the jury in their retirement, and returned with their verdict into court, and shall remain on file with papers of the case.

Sec. 138. **Conduct of jury after case is submitted.** That when a case is finally submitted, the jurors must be kept together in some convenient place under the charge of an officer until they agree upon a verdict or are discharged by the court; the officer having them in charge shall not suffer any communication to be made to them nor make any himself, except to ask them if they have agreed upon a verdict, unless by order of the court; nor shall he communicate to any person, before the verdict is delivered, any matter in relation to the state of their deliberations; and if the jurors be permitted to separate during the trial, they shall be admonished by the court that it is their duty not to converse with, nor to suffer themselves to be addressed by, any person, nor to listen to any conversation on the subject of the trial, nor to form or express an opinion thereon, until the case is finally submitted to them.

Bates's Ann. Ohio Statutes, s. 7312; Parker v. State, 18 Ohio St., 88; Weis v. State, 22 Ibid., 486; Davis v. State, 15 Ohio, 72; Bergin v. State, 31 Ohio St., 111; Jones v. State, 26 Ibid., 208; Hulse v. State, 35 Ibid., 421.

Sec. 139. **For what cause court may discharge jury.** That the court may discharge a jury without prejudice to the prosecution for the sickness of a juror, the corruption of a juror, or other accident or calamity, or because there is no probability of the jurors agreeing, and the reason for the discharge shall be entered on the journal.

Bates's Ann. Ohio. Statutes, s. 7313; Hines v. State, 24 Ohio St., 134; Stewart v. State, 15 Ibid., 155; Benedict v. State, 44 Ibid., 679.

Sec. 140. **Jury may be polled.** That when the jurors agree upon their verdict they must be conducted into court by the officer having them in charge; and before the verdict is accepted, the jury may be polled at the request of either the district attorney or the defendant.

Bates's Ann. Ohio Statutes, s. 7314; Sargent v. State, 11 Ohio, 472; Weaver v. State, 24 Ohio State, 584.

Sec. 141. **When jury to ascertain value of property.** That when an indictment charges an offense against property by larceny, embezzlement, or obtaining by false pretenses, the jury, on conviction, shall ascertain and declare in the verdict the value of the property stolen, embezzled, or falsely obtained.

Bates's Ann. Ohio Statutes, s. 7315; Armstrong v. State, 21 Ohio St., 357; Ellars v. State, 25 Ibid., 385; Pratt v. State, Ibid., 514.

Sec. 142. (Insanity must be proven;) intoxication not to be deemed insanity. That no act committed by a person while in a state of voluntary intoxication shall be deemed less criminal by reason of his having been in such condition; but whenever the actual existence of any particular motive, purpose, or intent is a necessary element to constitute any particular species or degrees of crime, the jury may take into consideration the fact that the defendant was intoxicated at the time in determining the purpose, motive, or intent with which he committed the act.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1358; State v. Zorn, 22 Oreg., 600; State v. Hansen, 25 Oreg., 392.

Sec. 143. Defendant to be convicted in the lowest degree in case of doubt. That when it appears that the defendant has committed a crime, and there is reasonable ground of doubt in which of two or more degrees he is guilty, he can be convicted of the lowest of those degrees only.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1359; State v. Cody, 18 Oreg., 519.

Sec. 144. When defendants jointly indicted entitled to separate trial. That when two or more defendants are jointly indicted for a felony, any defendant requiring it must be tried separately; but in other cases defendants jointly indicted may be tried separately or jointly, in the discretion of the court.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1360.

Sec. 145. When one of several defendants may be discharged as a witness for the State. That when two or more persons are charged in the same indictment, the court may, at any time before the defendant has gone into his defense, on the application of the district attorney, direct any defendant to be discharged from the indictment, so that he may be a witness for the United States.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1361.

Sec. 146. When one may be discharged to be a witness for defendant. That when two or more persons are charged in the same indictment, and the court is of the opinion that, in regard to a particular defendant, there is not sufficient evidence to put him on his defense, it must, if requested by another defendant then on trial, order him to be discharged from the indictment, before the evidence is closed, that he may be a witness for his co-defendant.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1362; Latshaw v. Territory, 1 Oreg., 141.

Sec. 147. Effect of such discharge. That the order provided for in the last two sections, when made, must state the reasons for making it; and it is an acquittal of the defendant discharged, and a bar to another prosecution for the same crime.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1363.

Sec. 148. Law of evidence in criminal cases. That the law of evidence in civil actions is also the law of evidence in criminal actions and proceedings, except as otherwise specially provided in this Act.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1364; State v. O'Neil, 13 Oreg., 183; State v. Mah Jim, 13 Ibid., 235; Howell v. State, 1 Ibid., 241; U. S. v. Williams, 1 Cliff., 25-26; U. S. v. Mulvaney, 4 Park Cr., 164; State v. Garrand, 5 Oreg., 156; State v. Ah Lee, 7 Ibid., 237; Goodall v. State, 1 Ibid., 333; State v. Ah Lee, 8 Ibid., 214; Fitzhugh v. State, 2 Ibid., 227; State v. Saunders, 14 Ibid., 300; State v. Hale, 12 Ibid., 352; State v. Mason, 26 Ibid., 273.

Sec. 149. Defendant can be witness. That in the trial of or examination upon all indictments, complaints, information, and other proceedings before

any court, magistrate, jury, or other tribunal, against persons accused or charged with the commission of crimes or offenses, the person so charged or accused shall, at his own request, but not otherwise, be deemed a competent witness, the credit to be given to his testimony being left solely to the jury, under the instructions of the court, or to the discrimination of the magistrate, or other tribunal before which such testimony may be given: Provided, That his waiver of such right shall not create any presumption against him; that such defendant or accused, when offering his testimony as a witness in his own behalf, shall be deemed to have given to the prosecution a right to cross-examination.

Laws Oreg., Oct. 25, 1880; Hill's Ann. Laws, s. 1365; State v. Anderson, 10 Oreg., 448; State v. Abrams, 11 Ibid., 169; State v. Clements, 15 Ibid., 249.

Sec. 150. **Husband or wife can be witness for or against each other in certain cases.** That in all criminal actions where the husband is the party accused, the wife shall be a competent witness, and when the wife is the party accused the husband shall be a competent witness; but neither husband nor wife, in such cases, shall be compelled or allowed to testify in such case unless by consent of both of them: Provided, That in all cases of personal violence upon either by the other, the injured party, husband or wife, shall be allowed to testify against the other.

Laws Oreg., Oct. 25, 1880; Hill's Ann. Laws, s. 1366; State v. Hatcher, 29 Oreg., 309.

Sec. 151. **Evidence in criminal actions to be given orally, except.** That in a criminal action the testimony of a witness must be given orally in the presence of the court and jury, except in the case of a witness whose testimony is taken by deposition, by order of the court, in pursuance of the consent of the parties, as provided in chapter thirteen of this Act.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1367; State v. Saunders, 14 Oreg., 300.

Sec. 152. **Error in proceedings not material, unless it prejudice substantial rights of defendant.** That neither a departure from the form or mode prescribed by this Act, in respect to any pleadings or proceedings, nor any error or mistake therein, renders it invalid, unless it have actually prejudiced the defendant, or tend to his prejudice in respect to a substantial right.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1369.

Sec. 153. **Testimony of accomplice must be corroborated.** That a conviction can not be had upon the testimony of an accomplice unless he be corroborated by such other evidence as tends to connect the defendant with the commission of the crime, and the corroboration is not sufficient if it merely show the commission of the crime or the circumstances of the commission.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1370.

Sec. 154. **Evidence on trial for false pretenses.** That upon a trial for having, by any false pretense, obtained the signature of any person to any written instrument, or obtained from any person any valuable thing, no evidence can be admitted of a false pretense expressed orally and unaccompanied by a false token or writing; but such pretense, or some note or memorandum thereof, must be in writing, and either subscribed by or in the handwriting of the defendant. This section does not apply to an action for falsely representing or personating another, and in such assumed character receiving any such valuable thing.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1373.

Sec. 155. **Evidence of female abducted or seduced must be corroborated.** That upon a trial for inveigling, enticing, or taking away an unmarried female for the purpose of prostitution, or for having seduced and had illicit connection

with an unmarried female, the defendant can not be convicted upon the testimony of the female injured, unless she is corroborated by some other evidence tending to connect the defendant with the commission of the crime.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1373.

Sec. 156. **Court to decide questions of law; knowledge of the court.** That all questions of law, including the admissibility of testimony, the facts preliminary to such admission, and the construction of statutes and other writings, and other rules of evidence, are to be decided by the court, and all discussions of law addressed to it; and whenever the knowledge of the court is by this Act made evidence of a fact, the court is to declare such knowledge to the jury, who are bound to accept it as conclusive.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1374; State v. May Looke, 7 Oreg., 54.

Sec. 157. **Jury to receive the law from the court and to decide the facts.** That although the jury have the power to find a general verdict, which includes questions of law as well as fact, they are bound, nevertheless, to receive as law what is laid down as such by the court; but all questions of fact other than those mentioned in the last section must be decided by the jury, and all evidence thereon addressed to them.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1375; State v. Reinhart, 26 Oreg., 466.

Sec. 158. **Defendant may be committed after appearance.** That when a defendant who has given bail appears for trial, the court may, in its discretion, at any time after such appearance, order him to be committed to actual custody to abide the judgment or further order of the court; and he must be committed and held in custody accordingly.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1376.

CHAPTER SIXTEEN.

OF THE VERDICT.

Sec.
159. Jury may convict of any degree of the crime charged, or of an attempt to commit the crime.
160. Jury may convict of any crime necessarily included in that charged.
161. Jury may give verdict as to defendants concerning whom they agree, and cause others to be tried again.
162. Custody of defendant when verdict given against him.
163. Proceeding when defendant acquitted on account of insanity.

Sec. 159. **Jury may convict of any degree of the crime charged, or of an attempt to commit the crime.** That upon an indictment for a crime consisting of different degrees, the jury may find the defendant not guilty of the degree charged in the indictment and guilty of any degree inferior thereto, or of an attempt to commit the crime or any such inferior degree thereof.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1382; State v. Wintzingerode, 3 Oreg., 153; Fitzhugh v. State, 2 Ibid., 217; State v. Grant, 7 Ibid., 414; State v. Taylor, 3 Ibid., 10; State v. Ah Lee, 7 Ibid., 237; State v. Whitney, 7 Ibid., 286; State v. Ryan, 15 Ibid., 573.

Sec. 160. **Jury may convict of any crime necessarily included in that charged.** That in all cases the defendant may be found guilty of any crime the commis-

sion of which is necessarily included in that with which he is charged in the indictment, or of an attempt to commit such crime.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1383; State v. Cody, 18 Oreg., 519; State v. Steeves, 29 Ibid., 109.

Sec. 161. **Jury may give verdict as to defendants concerning whom they agree and cause others to be tried again.** That on an indictment against several, if the jury can not agree upon a verdict as to all, they may give a verdict as to those in regard to whom they do agree, on which a judgment must be given accordingly; and the case as to the rest of the defendants may be tried by another jury.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1384.

Sec. 162. **Custody of defendant when verdict given against him.** That if a verdict be given against the defendant, he must be remanded if in custody; if he has given bail he may be permitted to await the judgment of the court upon the verdict. When committed his bail is exonerated, or if money be deposited in lieu thereof it must be refunded to the defendant.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1388.

Sec. 163. **Proceedings when defendant acquitted on account of insanity.** That if the defense be the insanity of the defendant the jury must be instructed, if they find him not guilty on that ground, to state that fact in their verdict, and the court must thereupon, if it deems his being at large dangerous to the public peace or safety, order him to be committed to any lunatic asylum authorized by the United States to receive and keep such persons until he become sane or be otherwise discharged therefrom by authority of law.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1389.

CHAPTER SEVENTEEN.

OF EXCEPTIONS AND NEW TRIAL.

Sec.
164. Definition of exception.
165. Exceptions, how taken.
166. When exceptions not taken or allowed.
167. Definition of new trial.
168. For what causes granted.
169. Motion for new trial.
170. Same, when made.
171. Motion should state grounds.
172. Counter affidavit, when allowed.

Sec. 164. **Definition of exception.** That an exception is an objection taken at the trial to a decision upon matter of law, whether such trial be by jury or court, and whether the decision be made during the formation of a jury, or in the admission or rejection of evidence, or in the charge to the jury, or at any other time from the calling of the action for trial to the rendering of the verdict or decision.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 230; State v. Drake, 11 Oreg., 396; Scott v. Cook, 1 Ibid., 24; Oregonian Ry. Co. v. Wright, 10 Ibid., 162; Thompson v. Backenstoss, 1 Ibid., 17; State v. Fort You, 24 Ibid., 67; Victorian No. 2, 26 Ibid., 197; Tucker v. Salem F. M. Co., 15 Ibid., 581.

Sec. 165. **Exceptions, how taken.** That the point of the exception shall be particularly stated, and may be delivered in writing to the judge or entered in

his minutes, and, at the time or afterwards, be corrected until made conformable to the truth.

Laws Oreg., Oct. 20, 1864; Hill's Ann. Laws, s. 231; Rogue River Mining Co. v. Walker, 1 Oreg., 341; Ah Lee v. Gong Choy, 13 Ibid., 205; Morgan v. Thompson, Ibid., 230; Chee Gong v. Stearns, 16 Ibid., 219; State v. Chee Gong, 17 Ibid., 635; Janeway v. Holston, 19 Ibid., 97; McQuaid v. P. & V. R'y Co., Ibid., 535; Fiore v. Ladd, 22 Ibid., 202; Johnston v. Oreg. S. L. R. Co., 23 Ibid., 94; Hamilton v. Gordon, 22 Ibid., 561.

Sec. 166. **When exceptions not taken or allowed.** That the statement of the exception, when settled and allowed, shall be signed by the judge and filed with the clerk, and thereafter it shall be deemed and taken to be a part of the record of the cause. No exception need be taken or allowed to any decision upon a matter of law when the same is entered in the journal or made wholly upon matters in writing and on file in the court.

Laws Oreg., Oct. 20, 1864; Hill's Ann. Laws, s. 233; Singer Mfg. Co. v. Graham, 8 Oreg., 17; Ah Lep v. Gong Choy, 13 Ibid., 205; Scott v. Cook, 11 Ibid., 24; Umatilla Irrig. Co. v. Burnhart, 22 Ibid., 389; Bridal v. Lum. Co. v. Johnson, 25 Ibid., 107; Kimerg v. Taylor, 29 Ibid., 234.

Sec. 167. **Definition of new trial.** That a new trial is a re-examination of an issue of fact in the same court after a trial and decision or verdict by a court or jury.

Laws Oreg., Oct. 20, 1864; Hill's Ann. Laws, s. 234.

Sec. 168. **For what causes granted.** That the former verdict or other decision may be set aside and a new trial granted, on the motion of the defendant, for any of the following causes materially affecting the substantial rights of such party:

First. Irregularity in the proceedings of the court, jury, or adverse party, or any order of the court or abuse of discretion, by which such party was prevented from having a fair trial.

Second. Misconduct of the jury or prevailing party.

Third. Accident or surprise which ordinary prudence could not have guarded against.

Fourth. Newly discovered evidence, material for the defendant, which he could not with reasonable diligence have discovered and produced at the trial.

Fifth. Insufficiency of the evidence to justify the verdict or other decision, or that it is against law.

Sixth. Error in law occurring at the trial and excepted to by the defendant.

Laws Oreg., Oct. 20, 1864; Hill's Ann. Laws, s. 235; State v. McDonald, 8 Oreg., 113; Arigoni v. Johnson, 6 Ibid., 167; Lander v. Miles, 3 Ibid., 40; Territory v. Latshaw, 1 Ibid., 146; Cutler v. Steamer Columbia, Ibid., 101; Hallock v. City of Portland, 8 Ibid., 29; State v. Mackey, 12 Ibid., 154.

Sec. 169. **Motion for new trial.** That a motion for a new trial, with the affidavits, if any, in support thereof, shall be filed within one day after the rendition of the verdict or other decision sought to be set aside. When the adverse party is entitled to oppose the motion by counter affidavits, he shall file the same within one day after the filing of the motion. The motion shall be heard and determined during the term, unless the court continue the same for advisement or want of time to hear it.

Laws Oreg., Oct. 20, 1864; Hill's Ann. Laws, s. 236; State v. Roberts, 15 Oreg., 198; Beekman v Hamlin, 23 Ibid., 313.

Sec. 170. **Same, when made.** That upon a trial by the court, when the decision is given in vacation, a motion for a new trial shall be filed within twenty days from the time of filing such decision. If the next regular term of said court shall commence within less than twenty days from the time of filing such decision, then such motion shall be filed by the first day of said term. In either

case the adverse party may, within four days after the filing of the motion, file counter affidavits, where the same are allowed.

Laws Oreg., Oct. 20, 1864; Hill's Ann. Laws, s. 237.

Sec. 171. **Motion should state grounds.** That in all cases of motion for a new trial the grounds thereof shall be plainly specified, and no cause of new trial not so stated shall be considered or regarded by the court. When the motion is made for a cause mentioned in subdivision one, two, three, or four of section one hundred and sixty-eight of this Title, it shall be upon affidavit setting forth the facts upon which such motion is based.

Laws Oreg., Oct. 20, 1864; Hill's Ann. Laws, s. 238.

Sec. 172. **Counter affidavit, when allowed.** That if the motion be supported by affidavits, counter affidavits may be offered by the adverse party; and if the cause be newly discovered evidence, the affidavits of any witness or witnesses showing what their testimony will be shall be produced, or good reason shown for their nonproduction; and in the consideration of any motion for a new trial, reference may be had to any proceedings in the case prior to the verdict or other decision sought to be set aside.

Laws Oreg., Oct. 20, 1864; Hill's Ann. Laws, s. 239.

CHAPTER EIGHTEEN.

OF ARREST OF JUDGMENT

Sec.
173. Motion in arrest of judgment.
174. Effect of arrest of judgment.
175. Defendant, when to be held.
176. When to be discharged.

Sec. 173. **Motion in arrest of judgment.** That a motion in arrest of judgment is an application on the part of the defendant that no judgment be rendered on a plea or verdict of guilty, or on a verdict against the defendant on a plea of a former conviction or acquittal. It may be founded on either or both of the causes specified in subdivisions one and four of section ninety of this Title, and not otherwise. The motion must be made within the time allowed to file a motion for a new trial, and both such motions may be made together, and heard and decided at once or separately, as the court may direct.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1391.

Sec. 174. **Effect of arrest of judgment.** That the effect of allowing a motion in arrest of judgment is to place the defendant in the same situation in which he was before the indictment was found.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1392.

Sec. 175. **Defendant, when to be held.** That if, from the evidence given on the trial, there is reasonable ground to believe the defendant guilty, and a new indictment can be framed upon which he may be convicted, the court must order the defendant to be recommitted to custody or admitted to bail, to answer the new indictment, if one be found; and if the evidence show him to be guilty of another crime than that charged in the indictment, he must in like manner be committed or held thereon, and in neither case is the verdict a bar to another action for the same crime.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1393.

Sec. 176. When to be discharged. That if no evidence appear sufficient to charge the defendant with any crime, he must, if in custody, be discharged, or if he has given bail or deposited money in lieu thereof, his bail is exonerated or his money must be refunded to him; and in such case the arrest of judgment operates as an acquittal of the charge upon which the indictment was founded.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1394.

CHAPTER NINETEEN.

OF THE JUDGMENT.

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177. Time for pronouncing judgment.
178. What time may be appointed.
179. If conviction for a felony, defendant must be present; if for misdemeanor, not necessary to be present.
180. Defendant, if in custody, must be brought before the court.
181. Proceeding when defendant on bail and does not appear for judgment.
182. Bench warrant to issue.
183. Form of bench warrant.
184. Bench warrant, how served.
185. Court may inquire into circumstances in aggravation or mitigation of punishment.
186. Testimony as to circumstances, how given.
187. Defendant may be examined if he consent.
188. No other testimony or representation to be received.
189. On conviction of two or more crimes, judgment of imprisonment, how given.
190. Judgment to pay fine; duration of imprisonment on.
191. Entry of judgment of conviction.
192. Judgment to pay fine to be docketed, and effect thereof.
193. The name of private prosecutor to be indorsed on indictment.
194. Judgment in case prosecution is malicious.
195. Judgment roll, how and when made.

Sec. 177. Time for pronouncing judgment. That after a plea or verdict of guilty, or after a verdict against the defendant on a plea of former conviction or acquittal, if the judgment be not arrested or a new trial granted, the court must appoint a time for pronouncing judgment.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1395.

Sec. 178. What time may be appointed. That the time appointed for pronouncing judgment must be at least two days after the verdict, if the court intend to remain in session so long, or if not, as remote time as can reasonably be allowed; but in no case can the judgment be given, except by the consent of the defendant, in less than six hours after the verdict.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1396.

Sec. 179. If conviction for a felony, defendant must be present; if for misdemeanor, not necessary to be present. That for the purpose of giving judgment, if the conviction be for a felony, the defendant must be personally present; but if it be for a misdemeanor, judgment may be given in his absence.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1397.

Sec. 180. Defendant if in custody must be brought before the court. That when the defendant is in custody, the court must direct the officer in whose custody he is to bring him before it for judgment, and the officer must do so accordingly.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1398.

Sec. 181. Proceeding when defendant on bail and does not appear for judgment. That if the defendant has given bail or has deposited money in lieu

thereof, and does not appear for judgment when his personal attendance is necessary, the court, in addition to the forfeiture of the undertaking of bail or the money deposited, may direct the clerk to issue a bench warrant for his arrest.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1399.

Sec. 182. **Bench warrant to issue.** That at any time after the making of the order for the bench warrant, the clerk, on the application of the district attorney, must issue such warrant, as by the order directed, whether the court be sitting or not.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1400.

Sec. 183. **Form of bench warrant.** That the bench warrant must be substantially in the following form:

"District court for the District of Alaska, Division No. .

"In the name of the United States of America.

"To the United States marshal for said District, or any deputy, greeting:

"A B having been, on the day of , eighteen hundred and , duly convicted in the court aforesaid of the crime of (designating it generally), this is to command you forthwith to arrest the above-named defendant and bring him before such court for judgment, or if the court have adjourned for the term, that you retain him in your custody. By order of the court.

"Witness my hand and seal of said district court, affixed at , this day of , eighteen hundred and .

[L. S.] "C D, Clerk."

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1401.

Sec. 184. **Bench warrant, how served.** That such bench warrant may be served in the same manner as provided in case of a bench warrant upon an indictment.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1402.

Sec. 185. **Court may inquire into circumstances in aggravation or mitigation of punishment.** That after a plea or verdict of guilty, or a verdict against the defendant on a plea of former conviction or acquittal, in a case where a discretion is conferred upon the court as to the extent of the punishment, the court, upon the suggestion of either party that there are circumstances which may properly be taken into view, either in aggravation or mitigation of the punishment, may, in its discretion, hear the same summarily at a specified time and upon such notice to the adverse party as it may direct.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1403.

Sec. 186. **Testimony as to circumstances, how given.** That the circumstances must be presented by the testimony of witnesses examined in open court, except that when a witness is so sick or infirm as to be unable to attend, his deposition may be taken out of court before such person authorized to take depositions, and at such time and place and upon such notice to the adverse party as the court may direct.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1404.

Sec. 187. **Defendant may be examined if he consent.** That if the defendant consent thereto, he may be examined as a witness in relation to such circumstances; but if he gives his testimony at his own request, then he must submit to be examined generally by the adverse party.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1405.

Sec. 188. **No other testimony or representation to be received.** That no affida-

vit or testimony or representation of any kind, verbal or written, can be offered to or received by the court in aggravation or mitigation of the punishment, except as provided in the last three sections; and a violation of this section may be punished as a contempt.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1406.

Sec. 189. On conviction of two or more crimes, judgment of imprisonment, how given. That if the defendant is convicted of two or more crimes, before judgment on either, the judgment must be that the imprisonment upon any one may commence at the expiration of the imprisonment upon any other of such crimes; and if the defendant be in imprisonment upon a previous judgment on a conviction for a crime, the judgment must be that the imprisonment must commence at the expiration of the term limited by such previous judgment.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1407.

Sec. 190. Judgment to pay fine; duration of imprisonment on. That a judgment that the defendant pay a fine must also direct that he be imprisoned in the county jail until the fine be satisfied, specifying the extent of the imprisonment, which can not exceed one day for every two dollars of the fine; and in case the entry of judgment should omit to direct the imprisonment and the extent thereof, the judgment to pay the fine shall operate to authorize and require the imprisonment of the defendant until the fine is satisfied at the rate above mentioned.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1408.

Sec. 191. Entry of judgment of conviction. That when judgment upon a conviction is given, the clerk must enter the same in the journal, stating briefly the crime for which the conviction has been had. Such entry may be made at any time during the term, as of the day's proceedings upon which the judgment was given.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1409.

Sec. 192. Judgment to pay fine to be docketed, and effect thereof. That a judgment that the defendant pay money either as a fine or as costs and disbursements of the action, or both, must be docketed as a judgment in a civil action and may be enforced by execution against the property of the defendant in like manner as judgments in civil cases are enforced: Provided, That where the judgment directs that the defendant shall be imprisoned until the fine or penalty imposed is paid, the issue of an execution on the judgment shall not operate to discharge the defendant from imprisonment until the amount of the judgment is collected or otherwise paid.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1410; R. S. U. S., 1878, s. 1041.

Sec. 193. The name of private prosecutor to be indorsed on indictment. That the name of every person who voluntarily appears before any commissioner, magistrate, or grand jury to prosecute any person in a criminal action, either for a misdemeanor or felony, shall be indorsed upon the complaint, information, or indictment as a private prosecutor; and if it be found by any commissioner, magistrate, or court trying said action or hearing said proceeding that the prosecution is malicious or without probable cause, said facts shall be entered upon record in said action or proceeding by said commissioner, magistrate, or court.

Laws Oreg., Oct. 20, 1862; Hill's Ann. Laws, s. 1411.

Sec. 194. Judgment in case prosecution is malicious. That upon making the entry prescribed in the last preceding section, the commissioner, magistrate, or

court must immediately render judgment against the private prosecutor for the costs and disbursements of the action or proceeding, which may be enforced by execution in the same manner as a judgment in a civil action.

Laws Oreg., Oct. 20, 1882; Hill's Ann. Laws, s. 1412.

Sec. 195. **Judgment roll, how and when made.** That immediately after the entry of judgment the clerk must prepare and annex together the following papers, which constitute the judgment roll:

First. The indictment and demurrer, if there be one;

Second. A copy of the journal entry of the plea, the trial, and verdict, and of any order involving the merits and necessarily affecting the judgment;

Third. A copy of the journal entry of the judgment;

Fourth. The bill of exceptions, if there be one.

And in all cases the clerk must attach upon the outside of the judgment roll a blank sheet of paper, upon which he shall indorse the name of the court, the term at which judgment was given, and the names of the parties to the action and the title thereof, for whom judgment was given, and the amount and nature thereof, and the date of its entry and docketing.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1413; State v. Reinhart, 26 Oreg., 466.

CHAPTER TWENTY.

OF THE EXECUTION.

Sec.
196. Authority for the execution of judgment, except of death.
197. Judgment of imprisonment or for a fine, how executed.
198. Warrant to enforce judgment of death.
199. Death sentence, how and where executed.
200. Judgment for money in criminal action, how enforced.
201. Return of marshal or officer executing judgment.

Sec. 196. **Authority for the execution of judgment, except of death.** That when a judgment, except of death, has been pronounced, a certified copy of the entry thereof upon the journal must be forthwith furnished by the clerk to the officer whose duty it is to execute the judgment; and no other warrant or authority is necessary to justify or require its execution.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1416.

Sec. 197. **Judgment of imprisonment or for a fine, how executed.** That when the judgment is imprisonment in the penitentiary, the marshal shall deliver the body of the defendant, together with a copy of the entry of judgment, to the keeper of such prison; and when the judgment is imprisonment in the county jail, or a fine, and that the defendant be imprisoned until it be paid, the judgment must be executed by the marshal.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1417.

Sec. 198. **Warrant to enforce judgment of death.** That when judgment of death is pronounced, a warrant, signed by the judge of the court and attested by the clerk, with the seal of the court affixed, must be drawn and delivered to the United States marshal. The warrant shall state the conviction and judgment and appoint a day on which the judgment is to be executed, which must not be less than sixty nor more than ninety days from the time of judgment.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1421; State v. Murphey, 15 Oreg., 205.

Sec. 199. Death sentence, how and where executed. That the punishment of death must be inflicted by hanging the defendant by the neck until he be dead, and the judgment must be executed by the United States marshal or his deputy; and all executions shall take place in the presence of twelve bona fide inhabitants of the District, to be selected by the marshal; and the fact of the faithful performance of the marshal or his deputy in carrying out the sentence of the court shall be certified by the said twelve inhabitants, and filed in the office of the clerk of the court.

Laws Oreg., Oct. 28, 1874; Hill's Ann. Laws, s. 1422.

Sec. 200. Judgment for money in criminal action, how enforced. That a judgment in a criminal action, so far as it requires the payment of money, whether the same be a fine or costs and disbursements of the action, or both, in addition to the means in this chapter provided, may be enforced as a judgment in a civil action.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1424.

Sec. 201. Return of marshal or officer executing judgment. That when a judgment in a criminal action has been executed, the marshal or officer executing it must return to the clerk the warrant or copy of the entry of judgment upon which he acted, with a statement of his doings indorsed thereon, and the clerk must file the same and annex it to the judgment roll in the case.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1425.

CHAPTER TWENTY-ONE.

OF APPEALS AND WRITS OF ERROR.

Sec.
202. Appeals and writs of error, how taken.

Sec. 202. Appeals and writs of error, how taken. That appeals and writs of error in criminal actions may be taken and prosecuted from the decisions and judgments of the district court of the District of Alaska to the Supreme Court of the United States, or to the circuit court of appeals for the ninth circuit, in the same manner and under the same regulations as from the circuit and district courts of the United States, under the Acts of Congress now in force or that may be hereafter enacted.

23 Stat. L., c. 24, s. 7; 26 Stat. L., c. 826, ss. 4, 5, 6, 7.

CHAPTER TWENTY-TWO

OF BAIL.

Sec.
203. Admission to bail defined.
204. Taking bail defined.
205. When defendant can not be admitted to bail.
206. When defendant admitted to bail before conviction, as a matter of right.
207. When defendant may be admitted to bail after conviction and during examination.
208. Who may admit to bail.
209. When only admitted to bail by court or judge where action is pending.
210. Order for admission to bail, how made.
211. Application when denied can not be made to another magistrate.
212. Admission to bail in such cases may be revoked or vacated.

Sec.
213. When defendant may appeal from decision denying application.
214. Manner of taking such appeal.
215. Decision of court on appeal final.
216. Bail, how put in and form of undertaking.
217. Undertaking, how executed.
218. Qualifications of bail.
219. Bail must justify.
220. Bail must be examined as to sufficiency.
221. Other testimony may be received as to the sufficiency of bail.
222. Decision upon a sufficiency of bail, and filing the papers.
223. Discharge of defendant on allowance of bail.
224. Form of bail on appeal.
225. Proceeding when bail disallowed.
226. Application to take bail or be admitted to bail, district attorney may appear.
227. When court or magistrate may require notice of application to be given to district attorney.
228. Bail may be taken with or without notice to the district attorney.

Sec. 203. **Admission to bail defined.** That admission to bail is the order of a competent court or magistrate that the defendant be discharged from actual custody upon bail.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1457.

Sec. 204. **Taking bail defined.** That the taking of bail consists in the acceptance by a competent court or magistrate, of the undertaking of sufficient bail for the appearance of defendant, according to the terms of the undertaking, or that the bail will pay to the United States a specified sum of money.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1458; U. S. v. Jones, 3 Wash. C. C., 224.

Sec. 205. **When defendant can not be admitted to bail.** That the defendant can not be admitted to bail when the proof or presumption of his guilt is evident or strong, and when he is charged with the crime of murder in the first degree or with treason or with rape.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1459.

Sec. 206. **When defendant admitted to bail before conviction, as a matter of right.** That if the charge be for any other crime than those mentioned in the last section, the defendant, before conviction, is entitled to be admitted to bail, as a matter of right.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1460.

Sec. 207. **When defendant may be admitted to bail after conviction and during examination.** That after judgment of conviction of a crime other than those mentioned in section two hundred and five of this Title, a defendant who has appealed, and when there is a stay of proceedings and not otherwise, may be admitted to bail as a matter of right; and as a matter of discretion, a defendant may be admitted to bail for his appearance from day to day before the magistrate, on the examination of the charge, before being held to answer, or discharged.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1461.

Sec. 208. **Who may admit to bail.** That a magistrate authorized to issue a warrant of arrest, as provided in sections two hundred and seventy-one and two hundred and seventy-two of this Title, is a magistrate authorized, within his jurisdiction, to admit to bail and to take bail, except as in this chapter otherwise provided.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1462.

Sec. 209. **When only admitted to bail by court or judge where action is pending.** That after an indictment is found, and upon an appeal, a defendant can not be admitted to bail except by the court, or judge thereof, where the action is pending or in which the judgment appealed from is given.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1463.

Sec. 210. Order for admission to bail, how made. That if an application to be admitted to bail be made to a court, an order must be made granting or denying it; and if it be granted, stating the sum in which bail may be taken; but if the application be made to a magistrate, he must certify, in writing, his decision granting or denying the same, and, if he grant it, stating the sum in which bail may be taken.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1464.

Sec. 211. Application when denied can not be made to another magistrate. That if an application for admission to bail be denied, no subsequent application therefor can be made to another magistrate; and a violation of this section may be punished as a contempt.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1465.

Sec. 212. Admission to bail in such cases may be revoked or vacated. That the admission to bail contrary to the last section may be revoked by the magistrate who made it, or vacated by the court, or judge thereof, in which the defendant is triable for the crime charged.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1466.

Sec. 213. When defendant may appeal from decision denying application. That if the application for admission to bail, when made to a magistrate, be denied, the defendant may appeal from the decision to the court or judge thereof in which the defendant is triable for the crime charged.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1467.

Sec. 214. Manner of taking such appeal. That such appeal is taken by a notice to the district attorney that the defendant appeals from the decision of the magistrate, and that he will apply to the court or judge thereof (naming it or him) to be admitted to bail at a time and place therein specified, the former not less than three days from the service of such notice.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1468.

Sec. 215. Decision of court on appeal final. That the decision of the court, or judge thereof, granting or denying bail, either upon an original application or upon an appeal, is final.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1469.

Sec. 216. Bail, how put in and form of undertaking. That bail is put in by a written undertaking, executed by two sufficient sureties, and acknowledged before the court or magistrate taking the same. It may be substantially in the following form:

First. Before indictment:

"An order having been made on the day of , eighteen hundred and , by A B (adding his official title and place of jurisdiction), that C D be held to answer upon a charge of (stating briefly the nature of the crime), upon which he has been duly admitted to bail in the sum of dollars,

"We, E F of (stating his place of residence and occupation), and G H, of (stating his place of residence and occupation), hereby undertake that the above named C D shall appear and answer the charge above mentioned, in whatever court it may be prosecuted, and shall at all times render himself amenable to the orders and process of the court; and, if convicted, shall appear for judgment, and render himself in execution thereof, or if he fail to perform either of those conditions that we will pay to the United States the sum of dollars" (inserting the sum in which the defendant is admitted to bail)

Second. After indictment and before judgment:

"An indictment having been found on the day of , eighteen hundred and , in the district court for the District of Alaska, division No. ,

charging A B with the crime of (designating it generally), and he having been duly admitted to bail in the sum of dollars" (the remainder of the undertaking may be in the words of the form numbered one, substituting the word "indictment" for the word "charge").

Third. Upon an appeal:

"A judgment having been given on the day of , whereby A B was condemned to (setting forth the terms of the judgment generally), and he having appealed from said judgment and been duly admitted to bail in the sum of dollars.

"We, C D, of (stating his place of residence and occupation), and E F, of (stating his place of residence and occupation), hereby undertake that the above-named A B shall in all respects abide and perform the orders and judgments of the appellate court upon the appeal, or if he fail to do so in any particular, that we will pay to the United States the sum of dollars" (inserting the sum in which the defendant is admitted to bail).

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1470; State v. Gardner, 29 Oreg., 254.

Sec. 217. **Undertaking, how executed.** That the undertaking must be dated and signed by the sureties in the presence of the magistrate taking the bail, and he must append thereto a certificate signed by him, with his name of office, and substantially in the following form: "Taken and acknowledged before me the day and year above written."

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1471.

Sec. 218. **Qualifications of bail.** That the qualifications of bail are as follows:

First. Each of them must be a resident within the district; but no counselor or attorney, marshal, clerk of any court, or other officer of any court is qualified to be bail.

Second. They must each be worth the sum specified in the undertaking, exclusive of property exempt from execution, and over and above all just debts and liabilities; but the court or magistrate, on taking the bail, may allow more than two bail to justify severally in amounts less than that expressed in the undertaking, if the whole justification be equivalent to that of two sufficient bail.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1472.

Sec. 219. **Bail must justify.** That the bail must in all cases justify by affidavit; and the affidavit must state that they each possess the qualifications prescribed by the last preceding section.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1473.

Sec. 220. **Bail must be examined as to sufficiency.** That the district attorney or the court or magistrate may, before the bail is taken, further examine them, upon oath, concerning their sufficiency, in such manner as the court or magistrate may deem proper. The statements of the bail in response to the examination must be reduced to writing, and subscribed by them.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1474.

Sec. 221. **Other testimony may be received as to the sufficiency of bail.** That the court or magistrate may also receive other testimony, either for or against the sufficiency of the bail, and may from time to time adjourn the taking of bail, to afford an opportunity of proving or disproving their sufficiency.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1475.

Sec. 222. **Decision upon a sufficiency of bail, and filing the papers.** That

when the examination is closed, the court or magistrate must indorse upon the undertaking an order either allowing or disallowing the bail, and must forthwith cause the same, with the affidavits and examination of the sureties and the order of admission to bail, to be filed with the clerk of the court at which the defendant is bound to appear, or where the action is pending, or the judgment appealed from is given, as the case may be.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1476.

Sec. 223. Discharge of defendant on allowance of bail. That upon the execution of the undertaking and the allowance of the bail, the court or magistrate must make an order, signed with his name of office, for the discharge of the defendant, to the following effect:

"To the United States marshal, District of Alaska.

"A B, who is detained by you to answer a [charge or indictment, as the case may be] for the crime of [designating it generally], having given sufficient bail to answer the same, you are commanded forthwith to discharge him from your custody."

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1477.

Sec. 224. Form of bail on appeal. That if the bail be taken upon an appeal from a judgment, the order must be to the effect following:

"To the United States marshal, District of Alaska:

"A B, who is detained by you in execution of a judgment whereby he is condemned to [stating the terms of the judgment generally], having appealed from said judgment and given sufficient bail to abide and perform the judgment of the appellate court, you are commanded forthwith to discharge him from your custody."

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1478.

Sec. 225. Proceeding when bail disallowed. That if the bail be disallowed, the defendant must be detained in custody until other bail be put in and is allowed.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1479.

Sec. 226. Application to take bail or be admitted to bail, district attorney may appear. That upon an application for admission to bail or to take bail, the district attorney, either in person or by anyone authorized by him, is entitled to appear and be heard in relation thereto.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1480.

Sec. 227. When court or magistrate may require notice of application to be given to district attorney. That when the admission to bail is a matter of discretion, or the right thereto may be doubtful, the court or magistrate by whom it may be ordered may require such notice of the application therefor as he deems reasonable to be given to the district attorney, or to any person by him authorized to appear for him.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1481.

Sec. 228. Bail may be taken with or without notice to the district attorney. That bail may be taken, in the discretion of the court or magistrate, without notice to the district attorney, or he may require reasonable notice for the application therefor, as in case of an application to bail.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1482.

CHAPTER TWENTY-THREE.

OF DEPOSIT INSTEAD OF BAIL.

Sec.
229. Deposit in lieu of bail, when and how made.
230. May be made after bail given and before forfeiture.
231. Bail may be given after deposit.
232. Deposit to be applied in payment of judgment for fine.

Sec. 229. **Deposit in lieu of bail, when and how made.** That the defendant, at any time after an order admitting him to bail, instead of giving bail may deposit with the clerk of the court at which he is held to answer, or in which the action is pending or the judgment appealed from is given, the sum of money mentioned in the order; and upon delivering to the officer in whose custody he is the clerk's certificate of such deposit he must be discharged from custody.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1483.

Sec. 230. **May be made after bail given and before forfeiture.** That if the defendant have given bail, he may, at any time before the forfeiture of their undertaking of it, in like manner deposit the sum of money mentioned in the undertaking; and upon the deposit being made and the certificate thereof given, the bail is exonerated.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1484.

Sec. 231. **Bail may be given after deposit.** That if money be deposited, as provided in the last two sections, bail may be given in the same manner as if it had been originally given upon the order for admission to bail, at any time before the forfeiture of the deposit, and the court or magistrate before whom the bail is taken must thereupon direct, in the order of allowance, that the money deposited be refunded by the clerk to the defendant; and it must be refunded accordingly.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1485.

Sec. 232. **Deposit to be applied in payment of judgment for fine.** That when any money has been deposited in lieu of bail, if it remain on deposit at the time of a judgment for the payment of money, the clerk must, under the direction of the court, apply the money in satisfaction thereof, and after satisfying the same must refund the surplus, if any, to the defendant.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1486.

CHAPTER TWENTY-FOUR.

OF THE SURRENDER OF THE DEFENDANT.

Sec.
233. Surrender, by whom, when, and how made.
234. Bail may arrest defendant for the purpose of surrender.
235. On surrender, if money deposited, must be refunded.
236. Notice to the district attorney to obtain order for deposit.

Sec. 233. **Surrender, by whom, when, and how made.** That at any time before the forfeiture of their undertaking, the bail may surrender the defend-

ant in their exoneration, or he may surrender himself to the officer to whose custody he was committed at the time of giving bail in the following manner:

First. A certified copy of the undertaking of the bail must be delivered to the officer, who must detain the defendant in his custody thereon, as upon a commitment, and by a certificate signed with his name of office acknowledge the surrender.

Second. At any time after the surrender of the defendant, either by his bail or himself, the court or judge thereof, at which the defendant is bound to appear, or where the action is pending or the judgment appealed from is given, as the case may be, may, upon reasonable notice to the district attorney, order that the bail be exonerated, and, upon the entry or filing of such order, they are exonerated accordingly.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1487.

Sec. 234. **Bail may arrest defendant for the purpose of surrender.** That for the purpose of surrendering the defendant, the bail, at any time before the forfeiture of their undertaking, and at any place within the district, may themselves arrest him, or by a written authority, indorsed on a certified copy of the undertaking, may empower any other person to do so.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1488.

Sec. 235. **On surrender, if money deposited, must be refunded.** That if money have been deposited in lieu of bail and the defendant, at any time before the forfeiture thereof, surrender himself to the officer to whose custody he was committed at the time of making the deposit, in the manner provided in section two hundred and thirty-three, of this Title the court or judge thereof must order a return of the deposit to the defendant, upon producing the certificate of the officer showing the surrender, and upon reasonable notice of the application to the district attorney.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1489.

Sec. 236. **Notice to the district attorney to obtain order for deposit.** That the notice to be given to the district attorney, as required in this chapter, may be given to him personally or to any person authorized to appear for him, as provided in sections two hundred and twenty-six and two hundred and twenty-seven of this Title.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1490.

CHAPTER TWENTY-FIVE.

OF THE FORFEITURE OF THE UNDERTAKING OF BAIL OR THE DEPOSIT MONEY.

Sec.
237. Undertaking, when forfeited, and how ordered.
238. When and how forfeiture may be discharged.
239. Forfeiture to be enforced by action.
240. Remission of forfeiture.
241. Conditions of remission.
242. Applications therefor, how made, judgment on final.
243. Deposit of money, how disposed of when forfeited.

Sec. 237. **Undertaking, when forfeited and how ordered.** That if, without sufficient excuse, the defendant neglect or fail to appear for arraignment, or

for trial or judgment, or upon any other occasion when his presence in court may be lawfully required, or to surrender himself in execution of the judgment, the court must direct the fact to be entered in its journal; and the undertaking of bail or the money deposited in lieu thereof, as the case may be, is thereupon forfeited.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1491.

Sec. 238. **When and how forfeiture may be discharged.** That if, at any time before the final adjournment of the court, the defendant appear and satisfactorily excuse his neglect or failure, the court may direct the forfeiture of the undertaking or deposit to be discharged, upon such terms as are just.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1492.

Sec. 239. **Forfeiture to be enforced by action.** That if the forfeiture be not discharged, as provided in the last section, the district attorney may, at any time after the adjournment of the court, proceed, by action only, against the bail upon their undertaking.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1493.

Sec. 240. **Remission of forfeiture.** That at any time before judgment against the bail, in an action upon the undertaking, they may apply to the court for a remission of the forfeiture, and thereupon the court, upon good cause shown, may remit the forfeiture, or any part thereof, upon such terms as may be just and reasonable, according to the circumstances of the case.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1494.

Sec. 241. **Conditions of remission.** That the court can only remit the forfeiture, in whole or in part, upon the payment of the costs and expenses incurred in the proceedings for its enforcement; and if part only be remitted, judgment must be given against the bail for the remainder, and such judgment is a bar to an action upon the undertaking, or if one be already commenced, it is thereby abated.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1495.

Sec. 242. **Applications therefor, how made; judgment on final.** That the application for remission must be upon at least ten days' notice to the district attorney, with copies of all affidavits and papers on which it is founded. The application must admit the forfeiture and their legal obligation to pay the sum mentioned in the undertaking, and the judgment or order of the court in the matter is final.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1496.

Sec. 243. **Deposit of money, how disposed of when forfeited.** That if money deposited in lieu of bail is forfeited and the forfeiture be not discharged, as provided in section two hundred and thirty-eight, of this Title the clerk with whom it is deposited must, after the final adjournment of the court, forthwith deposit the same in the same manner as in the case of moneys collected upon judgments in favor of the United States.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1497.

CHAPTER TWENTY-SIX.

OF RECOMMITMENT OF THE DEFENDANT AFTER BAIL OR A DEPOSIT OF MONEY IN LIEU THEREOF.

Sec.
244. When defendant may be recommitted.
245. Contents of the order for the arrest.
246. Defendant arrested on copy of order, how served.
247. If for failure to appear for judgment, defendant must be committed.
248. If for other cause he may be admitted to bail.
249. Bail in such case, by whom taken.
250. Form of the undertaking.
251. Qualifications of bail, and how put in.

Sec. 244. When defendant may be recommitted. That the court at which the defendant is bound to appear, or where the action is pending, or the judgment appealed from is given, may, by an order entered upon its journal, direct the arrest of the defendant and his commitment to the officer to whose custody he was committed at the time of giving bail, and his detention until legally discharged, in the following cases:

First. When, by reason of his neglect or failure to appear, he has incurred a forfeiture of his bail, or of money deposited in lieu thereof, as provided in section two hundred and thirty-seven of this Title;

Second. When it satisfactorily appears to the court that his bail, or either of them, are dead or insufficient, or have removed from the district;

Third. Upon an indictment being found in the cases provided for in section eighty of this Title.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1498.

Sec. 245. Contents of the order for the arrest. That the order for the recommitment of the defendant must recite, generally, the facts upon which it is founded, and direct that the defendant be arrested by the United States marshal or any deputy, to be detained until legally discharged.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1499.

Sec. 246. Defendant arrested on copy of order, how served. That the defendant may be arrested pursuant to the order, upon a certified copy thereof, in the same manner as upon a bench warrant.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1500.

Sec. 247. If for failure to appear for judgment, defendant must be committed. That if the order recite, as the ground upon which it is made, the failure of the defendant to appear for judgment upon conviction, the defendant must be committed according to the requirement of the order.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1501.

Sec. 248. If for other cause, he may be admitted to bail. That if the order be made for any other cause than that specified in the last section, and the crime be bailable, the court may direct in the order that the defendant be admitted to bail, in an amount to be therein specified.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1502.

Sec. 249. Bail in such case, by whom taken. That when the defendant is admitted to bail the bail may be taken by any magistrate having authority to take bail, as provided in section two hundred and eight of this Title, or by any particular magistrate, to be designated by the order.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1503.

Sec. 250. **Form of the undertaking.** That when bail is taken upon an order for the recommitment of the defendant, the undertaking of bail must be in substantially the form prescribed in section two hundred and sixteen of this Title for the original undertaking of bail, except that it need not refer to the original order of admission to bail and must specify the court in which the order for recommitment and admission to bail is made and the date of such order.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1504.

Sec. 251. **Qualifications of bail and how put in.** That the bail must possess the qualifications and must be put in in all respects in the manner prescribed by chapter twenty-two of this Act.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1505.

CHAPTER TWENTY-SEVEN.

OF COMPELLING THE ATTENDANCE OF WITNESSES.

Sec.
252. Subpoenas, and so forth, how regulated.

Sec. 252. **Subpoenas, etc., how regulated.** That the issuance of subpœnas and all proceedings to compel the attendance of witnesses in criminal actions in the said District shall be regulated by the laws of the United States respecting district and circuit courts.

R. S., 1878, c. 17.

CHAPTER TWENTY-EIGHT.

OF COMPROMISING CERTAIN CRIMES BY LEAVE OF THE COURT.

Sec.
253. What crimes may be compromised.
254. Compromise by permission of the court; order thereon.
255. Order a bar to another prosecution.
256. No crime can be compromised, except.

Sec. 253. **What crimes may be compromised.** That when a defendant is held to answer on a charge of misdemeanor, for which the person injured by the act constituting the crime has a remedy by a civil action, the crime may be compromised, as provided in the next section, except when it was committed—

First. By or upon an officer of justice while in the execution of the duties of his office;

Second. Riotously; or

Third. With an intent to commit a felony; or

Fourth. Larcenously.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1519.

Sec. 254. **Compromise by permission of the court; order thereon.** That if the party injured appear before the court at which the defendant is bound to appear, at any time before trial on an indictment for the crime, and acknowledge in writing that he has received satisfaction for the injury, the court may, in its discretion, on payment of the costs and expenses incurred, order all further proceedings to be stayed upon the prosecution and the

defendant to be discharged therefrom; but the order and the reasons therefor must be entered on the journal.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1520; Saxon v. Hill, 6 Oreg., 383.

Sec. 255. **Order a bar to another prosecution.** That the order authorized by the last section, when made and entered, is a bar to another prosecution for the same crime.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1521.

Sec. 256. **No crime can be compromised, except.** That no crime can be compromised, nor can any proceeding for the prosecution or punishment thereof be stayed upon a compromise, except as provided in this chapter.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1522.

CHAPTER TWENTY-NINE.

OF DISMISSAL OF THE ACTION FOR WANT OF PROSECUTION OR OTHERWISE.

Sec.
257. Dismissal of charge when indictment not found at next term.
258. Dismissal of action when not brought to trial at next term after indictment found.
259. Court may continue cause and admit defendant to bail on his own undertaking.
260. Effect of dismissal of action or charge upon bail or deposit.
261. When court may dismiss action on its own motion or that of the district attorney.
262. Nolle prosequi abolished.
263. Dismissal, when a bar to another action.

Sec. 257. **Dismissal of charge when indictment not found at next term.** That when a person has been held to answer for a crime, if an indictment be not found against him at the next term of the court at which he is held to answer, the court must order the prosecution to be dismissed, unless good cause to the contrary be shown.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1523.

Sec. 258. **Dismissal of action when not brought to trial at next term after indictment found.** That if a defendant, indicted for a crime, whose trial has not been postponed upon his application or by his consent, be not brought to trial at the next term of the court in which the indictment is triable after it is found, the court must order the indictment to be dismissed, unless good cause to the contrary be shown.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1524.

Sec. 259. **Court may continue cause and admit defendant to bail on his own undertaking.** That if the defendant be not indicted or tried as provided in the last two sections, and sufficient reason therefor be shown, the court may order the action to be continued from term to term, and in the meantime may discharge the defendant from custody, on his own undertaking of bail, for his appearance to answer the charge or action at the time to which the same is continued.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1525.

Sec. 260. **Effect of dismissal of action or charge upon bail or deposit.** That if the court direct the charge or action to be dismissed, the defendant must, if in custody, be discharged therefrom, or if admitted to bail, his bail is exonerated, or money deposited in lieu thereof must be refunded to him.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1526.

Sec. 261. **When court may dismiss action on its own motion or that of the district attorney.** That the court may, either on its own motion or upon the application of the district attorney, and in furtherance of justice, order an action, after indictment, to be dismissed; but in that case the reasons of the dismissal must be set forth in the order, which must be entered in the journal.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1527; State v. Reinhart, 26 Oreg., 466.

Sec. 262. **Nolle prosequi abolished.** That the entry of a nolle prosequi is abolished; and the district attorney can not discontinue or abandon a prosecution for a crime, except as provided in the last section.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1528; State v. Reinhart, 26 Oreg., 466.

Sec. 263. **Dismissal, when a bar to another action.** That an order for the dismissal of a charge or action, as provided in this chapter, is a bar to another prosecution for the same crime, if it be a misdemeanor, but it is not a bar if the crime charged be a felony.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1529; State v. Reinhart, 26 Oreg., 466.

CHAPTER THIRTY.

OF THE DISPOSAL OF PROPERTY STOLEN OR EMBEZZLED.

Sec.
264. How officer to hold property alleged to have been stolen or embezzled.
265. Order for delivery to the owner by magistrate.
266. Order by court where trial is had.
267. Effect of order of delivery of property.
268. Receipt for money or property taken from person when arrested.
269. Sale and disposition of property when not claimed.

Sec. 264. **How officer to hold property alleged to have been stolen or embezzled.** That when property alleged to have been stolen or embezzled comes into the custody of a peace officer, he must hold it subject to the order of the magistrate or court, as provided in this chapter.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1530.

Sec. 265. **Order for delivery to the owner by magistrate.** That on satisfactory proof of title of the owner of the property, the magistrate who examines the charge against the person accused of the crime must order it to be delivered to the owner, or his duly authorized agent, on his paying the reasonable and necessary expenses incurred in its preservation, to be ascertained and certified by the magistrate.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1531.

Sec. 266. **Order by court where trial is had.** That if property stolen or embezzled has not been delivered to the owner, the court before which the trial is had for the stealing or embezzling may, on like proof and condition, order its delivery to the owner or his agent.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1532.

Sec. 267. **Effect of order of delivery of property.** That the order provided for in the last two sections entitles the owner or his agent to demand and receive the possession of the property from the officer having it in custody,

and authorizes such officer to deliver it accordingly, but does not affect the rights of third persons.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1533.

Sec. 268. **Receipt for money or property taken from person when arrested.** That when money or other property is taken from a person arrested upon a charge of crime, the officer taking it must at the time give duplicate receipts therefor, specifying particularly the amount of money or kind of property taken, one of which receipts he must then deliver to the person arrested and the other to the magistrate who examines the charge; or if the arrest be after indictment found, to the clerk of the court where the action is pending.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1534.

Sec. 269. **Sale and disposition of property when not claimed.** That if property stolen or embezzled be not claimed by the owner before the expiration of sixty days from the conviction of the person for stealing or embezzling it, the officer having it in custody must, if it be money, pay it to the clerk of the court, or if it be other property, must sell it as upon an execution, and after paying the expenses of the sale and preservation of the property, to be ascertained and certified by the clerk of the court, pay the proceeds to the clerk of the court, to be deposited by him as in the case of moneys collected upon judgments in favor of the United States.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1535.

CHAPTER THIRTY-ONE.

OF THE INFORMATION AND BY WHOM TAKEN.

Sec.
270. Information defined.
271. Magistrate defined.
272. Who are magistrates.

Sec. 270. **Information defined.** That an information is the allegation or statement made before a magistrate, and verified by the oath of the party making it, that a person has been guilty of some designated crime.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1546.

Sec. 271. **Magistrate defined.** That a magistrate is an officer having power to issue a warrant for the arrest of a person charged with the commission of a crime.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1547.

Sec. 272. **Who are magistrates.** That the following persons are magistrates:

First. The judge of the district court.

Second. The commissioners authorized by Act of Congress to exercise the powers and duties of justices of the peace.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1548; 23 Stat. L., c. 24, s. 5; 28 Stat. L., c. 177, par. 12; Laws 55th Con., c. 2.

CHAPTER THIRTY-TWO.

OF THE WARRANT OF ARREST.

Sec.
273. Examination of informant and his witnesses.
274. When warrant of arrest to issue.
275. Definition and form of warrant.
276. What warrant is to contain.
277. Peace officer defined.
278. Duty of officer making arrest.
279. Statement and depositions to be sent to magistrate who makes examination.
280. Defendant must be taken before magistrate without delay.

Sec. 273. **Examination of informant and his witnesses.** That when complaint is made to a magistrate of the commission of a crime he must examine the informant on oath, and reduce his statement to writing and cause the same to be subscribed by him, and also take the depositions of any witnesses that the informant may produce in support thereof.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1549.

Sec. 274. **When warrant of arrest to issue.** That thereupon, if the magistrate be satisfied that the crime complained of has been committed, and that there is probable cause to believe that the person charged has committed it, he must issue a warrant of arrest.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1550.

Sec. 275. **Definition and form of warrant.** That a warrant of arrest is an order in writing, in the name of the United States, signed by a magistrate with his name of office, commanding the arrest of the defendant, and may be substantially in the following form: "District of Alaska, division No.

"In the name of the United States of America.

"To the United States marshal of the District of Alaska or any deputy, greeting:

"Information upon oath having been this day laid before me that the crime of (designating it) has been committed, and accusing C D thereof:

"You are, therefore, hereby commanded forthwith to arrest the above-named C D and bring him before me at (naming the place), or, in case of my absence or inability to act, before the nearest or most accessible magistrate.

"Dated at , this day of , eighteen hundred and .

"E F,

"Commissioner, ex officio Justice of the Peace."

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1551.

Sec. 276. **What warrant is to contain.** That the warrant must specify the name of the defendant, or if it be unknown to the magistrate, the defendant may be designated by a fictitious name, with a statement therein that his true name is unknown, and it must also state a crime in respect of which the magistrate has authority to issue the warrant.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1552.

Sec. 277. **Peace officer defined.** That a peace officer is the United States marshal or any deputy, and a warrant of arrest must be directed to an executed by such officer. For this purpose the marshal or any deputy is to be deemed a constable.

Sec. 278. **Duty of officer making arrest.** That the officer making the arrest must take the defendant before the magistrate who issued the warrant,

or, in case he be absent or unable to act, before the nearest or most accessible magistrate, and the officer must, at the same time, deliver to the magistrate the warrant, with his return indorsed and subscribed by him.

Sec. 279. **Statement and depositions to be sent to magistrate who makes examination.** That if the defendant be taken for examination before a magistrate other than the one who issued the warrant, the statement and depositions on which the warrant was granted must be sent to that magistrate; or, if they can not be procured, the informant and his witnesses must be subpœnaed to give their testimony anew.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1564.

Sec. 280. **Defendant must be taken before magistrate without delay.** That the defendant must, in all cases, be taken before the magistrate without delay.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1565.

CHAPTER THIRTY-THREE.

OF THE ARREST, HOW AND BY WHOM MADE.

Sec.
281. Arrest defined.
282. By whom an arrest may be made.
283. Every person bound to aid an officer in making an arrest.
284. Arrest, how made.
285. No further restraint allowed than is necessary.
286. Officer must state his authority and show warrant if required.
287. If defendant flee or resist, officer may use necessary means.
288. When officer may break open door or window.
289. Same subject.
290. When peace officer may arrest without warrant.
291. May break open door or window if admittance refused.
292. Officer must state his authority and cause of arrest, except.
293. When officer may take person before magistrate, arrested by a bystander.
294. When magistrate may commit for crime committed in his presence.
295. Arrest by private person, when allowed.
296. Must take person before a magistrate or deliver him to a peace officer.
297. Pursuit of person rescued or escaping.
298. May use proper means in making an original arrest.

Sec. 281. **Arrest defined.** That arrest is the taking of a person into custody that he may be held to answer for a crime.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1566.

Sec. 282. **By whom an arrest may be made.** That an arrest may be made either:

First. By a peace officer, under a warrant;

Second. By a peace officer without a warrant; or

Third. By a private person.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1567.

Sec. 283. **Every person bound to aid an officer in making an arrest.** That every person must aid an officer in the execution of a warrant, if the officer require his aid and be present and acting in its execution.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1568.

Sec. 284. **Arrest, how made.** That an arrest is made by an actual restraint

of the person of the defendant, or by his submission to the custody of the officer.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1570.

Sec. 285. **No further restraint allowed than is necessary.** That the defendant is not to be subjected to any more restraint than is necessary and proper for his arrest and detention.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1571.

Sec. 286. **Officer must state his authority and show warrant if required.** That the officer must inform the defendant that he acts under the authority of the warrant, and must also show the warrant if required by the defendant.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1572.

Sec. 287. **If defendant flee or resist, officer may use necessary means.** That if, after notice of intention to arrest the defendant, he either flee or forcibly resist, the officer may use all necessary and proper means to effect the arrest.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1573; Lander v. Miles, 3 Oreg., 35.

Sec. 288. **When officer may break open door or window.** That the officer may break open any outer or inner door or window of a dwelling house, or otherwise, to execute the warrant, if after notice of his authority and purpose he be refused admittance.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1574.

Sec. 289. **Same subject.** That the officer may break open any outer or inner door or window of a dwelling house, or otherwise, for the purpose of liberating a person who, having entered for the purpose of making an arrest, is detained therein, or when necessary for his own liberation.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1575.

Sec. 290. **When peace officer may arrest without warrant.** That a peace officer may, without a warrant, arrest a person—

First. For a crime committed or attempted in his presence;

Second. When the person arrested has committed a felony, although not in his presence;

Third. When a felony has in fact been committed, and he has reasonable cause for believing the person arrested to have committed it.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1576.

Sec. 291. **May break open door or window if admittance refused.** That to make arrests as provided in the last section the officer may break open any door or window, as provided in sections two hundred and eighty-eight and two hundred and eighty-nine of this Title, if after notice of his office and purpose, he be refused admittance.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1577.

Sec. 292. **Officer must state his authority and cause of arrest, except.** That when arresting a person without a warrant the officer must inform him of his authority and the cause of the arrest, except when he is in the actual commission of a crime, or is pursued immediately after its commission, or an escape.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1578.

Sec. 293. **When officer may take person before magistrate arrested by a bystander.** That an officer may without warrant, take before a magistrate

a person who, being engaged in a breach of the peace, is arrested by a bystander and delivered to him.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1579.

Sec. 294. **When magistrate may commit for crime committed in his presence.** That when a crime is committed in the presence of a magistrate he may, by a verbal or written order, command any person to arrest the offender, and may thereupon proceed as if the offender had been brought before him upon a warrant of arrest.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1580.

Sec. 295. **Arrest by private person, when allowed.** That a private person may arrest another for the causes specified in section two hundred and ninety of this Title, in like manner and with like effect as a peace officer without warrant.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1581.

Sec. 296. **Must take person before a magistrate or deliver him to a peace officer.** That a private person who has arrested another for the commission of a crime must without unnecessary delay take him before a magistrate or deliver him to a peace officer.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1582.

Sec. 297. **Pursuit of person rescued or escaping.** That if a person arrested escape or be rescued, the person from whose custody he escaped or was rescued may immediately pursue and retake him at any time and in any place in said District.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1583.

Sec. 298. **May use proper means in making an original arrest.** That to retake the person escaping or rescued, the person pursuing may use all the means and do any act necessary and proper in making an original arrest.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1584.

CHAPTER THIRTY-FOUR.

OF THE EXAMINATION OF THE CASE AND DISCHARGE OF THE DEFENDANT OR HOLDING HIM TO ANSWER.

Sec.
299. Magistrate to inform defendant of the charge and his right to counsel.
300. Time to send, and sending for counsel.
301. Examination, when to proceed.
302. Examination, when completed; adjournment.
303. On adjournment defendant to be committed or give bail.
304. Form of commitment.
305. When witnesses to be supœnaed.
306. Witnesses to be examined in presence of defendant.
307. Defendant to be informed of his right to make a statement.
308. Waiver of his right and effect thereof.
309. Statement of defendant, how taken.
310. Same subject.
311. How reduced to writing and how authenticated.
312. Statement of defendant, when used as testimony.
313. Defendant's witnesses to be examined, when.
314. Magistrate may exclude witnesses.
315. Testimony of witnesses need not be reduced to writing.
316. Proceedings in testimony, how and by whom kept.
317. Violation of last section, how punished.
318. Informant may employ counsel, but district attorney to control proceedings.

Sec.
319. Defendant, when and how discharged.
320. Same subject.
321. Defendant, when to be committed; order for commitment.
322. Defendant, how committed.
323. Form of commitment.
324. Commitment to be directed to marshal, and how defendant to be kept.
325. Order for bail on commitment.
326. Undertaking for material witnesses.
327. Security for appearance of witnesses, when may be required.
328. Infants and married women may be required to give security.
329. Witness refusing to give undertaking must be committed.
330. Magistrate to return proceedings and papers.

Sec. 299. **Magistrate to inform defendant of the charge and his right to counsel.** That when the defendant is brought before a magistrate upon an arrest, either with or without warrant, on a charge of having committed a crime, the magistrate must immediately inform him of the charge against him and of his right to the aid of counsel before any further proceedings are had.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1585.

Sec. 300. **Time to send, and sending for counsel.** That he must allow the defendant a reasonable time to send for counsel, and adjourn the examination for that purpose; and may, upon the request of the defendant, require a peace officer to take a message to such counsel in the precinct, town, or village as the defendant may name. The officer, when required by the magistrate, must take the message without delay.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1586.

Sec. 301. **Examination, when to proceed.** That immediately after the appearance of counsel, or if, after waiting a reasonable time, none appear, or if the defendant do not require counsel, the magistrate must proceed to examine the case.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1587.

Sec. 302. **Examination, when completed; adjournment.** That the examination must be completed at one session, unless the magistrate, for good cause shown by affidavit, adjourn it; and the adjournment can not be for more than one day at each time, nor more than six days in all, unless by consent or on motion of the defendant.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1588.

Sec. 303. **On adjournment defendant to be committed or given bail.** That if an adjournment be had for any cause, the magistrate must commit the defendant for examination, or may, in his discretion, discharge him from custody until the close of the examination, upon his giving bail or depositing money in lieu thereof, as provided in this Act, for his appearance at the time to which the examination is adjourned.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1589; Hannah v. Wells, 4 Oreg., 249; State v. Gardner, 29 Oreg., 254.

Sec. 304. **Form of commitment.** That the commitment for examination is by an indorsement, signed by the magistrate, on a warrant of arrest, to the following effect: "The within named A B, having been brought before me under this warrant, is committed for examination to the custody of the officer having him in charge."

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1590.

Sec. 305. **When witnesses to be subpoenaed.** That at the examination the magistrate must, in the first place, read to the defendant the statement and affidavits upon which the warrant of arrest is issued, and if the defendant re-

quest it, must subpoena the informant and witnesses so examined, if they be within fifty miles of the place where the magistrate sits, and if they be within such distance he must issue subpoenas for additional witnesses when required by the informant or the defendant.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1591.

Sec. 306. Witnesses to be examined in presence of defendant. That the witnesses must be examined in the presence of the defendant, and may be cross-examined in his behalf or against him.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1593.

Sec. 307. Defendant to be informed of his right to make a statement. That when the examination of the witnesses on the part of the United States is closed, the magistrate must inform the defendant that it is his right to make a statement in relation to the charge against him; that the statement is designed to enable him, if he sees fit, to answer the charge and explain the facts alleged against him; that he is at liberty to waive making a statement, and that his waiver can not be used against him on the trial.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1594; State v. Hatcher, 29 Oreg., 309.

Sec. 308. Waiver of his right and effect thereof. That if the defendant waive his right to make a statement, the magistrate must make a memorandum thereof in the proceedings; but the fact of his waiver can not be used against the defendant on the trial.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1595.

Sec. 309. Statement of defendant, how taken. That if the defendant choose to make a statement, the magistrate must proceed to take it in writing, and must put to the defendant the following questions only:

First. What is your name and age?

Second. Where were you born?

Third. Where do you reside, and how long have you resided there?

Fourth. What is your business or occupation?

Fifth. Give any explanation you may think proper of the circumstances appearing in the testimony against you, and state any facts which you think will tend to your exculpation.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1596.

Sec. 310. Same subject. That the answer of the defendant to each of the questions must be read to him as it is taken down. He may thereupon correct or add to his answer until it is made conformable to what he declares to be the truth.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1597.

Sec. 311. How reduced to writing and how authenticated. That the statement of the defendant be reduced to writing by the magistrate or under his direction, and authenticated in the following form:

First. It must set forth that the defendant was informed of his rights as providing in section three hundred and seven, of this Title and that after being so informed he made the statement.

Second. It need not contain the questions put to the defendant, but must contain his answers thereto, with the corrections and additions, if any are made.

Third. It may be signed by the defendant, but if he refuse to sign it, his reason therefor must be stated as he gives it.

Fourth. It must be signed and certified to by the magistrate.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1598; State v. Hatcher, 29 Oreg., 309.

Sec. 312. **Statement of defendant, when used as testimony.** That the statement of the defendant is competent testimony to be laid before the grand jury, and may be given in evidence against the defendant on the trial.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1599.

Sec. 313. **Defendant's witnesses to be examined, when.** That after the waiver of the defendant to make a statement, or after he has made it, his witnesses, if he produce any, must be sworn and examined.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1600.

Sec. 314. **Magistrate may exclude witnesses.** That the magistrate may exclude the witnesses who have not been examined during the examination of the defendant, or during the examination of the witnesses for the United States or the defendant.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1601.

Sec. 315. **Testimony of witnesses need not be reduced to writing.** That the testimony of the witnesses need not be reduced to writing, except as provided in section two hundred and seventy-three, of this Title but the magistrate must make a memorandum of the name of each witness, his place of residence, and business or occupation.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1602.

Sec. 316. **Proceedings in testimony, how and by whom kept.** That the magistrate must keep the statement and depositions taken on the information, the statement of the defendant, if any, together with the memorandum specified in sections three hundred and eight and three hundred and fifteen, of this Title until they are returned to the proper court, and must not permit them to be inspected by any person except the district attorney, or the attorney who acts for him, and the defendant and his counsel.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1603.

Sec. 317. **Violation of last section, how punished.** That a violation of the last section is punishable as a contempt by the court having jurisdiction of the crime charged against the defendant.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1604.

Sec. 318. **Informant may employ counsel, but district attorney to control proceedings.** That the informant may employ counsel to appear against the defendant on the examination in every stage of the proceedings; but the district attorney, either in person or by some attorney authorized to act for him, is entitled to appear on behalf of the United States and control and conduct the prosecution,

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1605.

Sec. 319. **Defendant, when and how discharged.** That after hearing the proofs and the statement of the defendant, if he have made one, if it appear either that a crime has not been committed or that there is no sufficient cause to believe the defendant guilty thereof, the magistrate must order the defendant to be discharged, by an indorsement on the warrant signed by him, to the following effect: "There being no sufficient cause shown to believe the within-named A B guilty of the crime within mentioned, I order him to be discharged."

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1606.

Sec. 320. **Same subject.** That if the arrest have been made without warrant, the discharge may be made by a certificate in writing, signed by the magistrate, to the following effect: "There being no sufficient cause shown to be-

lieve A B, brought before me without warrant, guilty of the crime of (designating it generally), I order him to be discharged." This certificate must be delivered to the defendant.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1607.

Sec. 321. **Defendant, when to be committed; order for commitment.** That if, however, it appear from the examination that a crime has been committed, and that there is sufficient cause to believe the defendant guilty thereof, the magistrate must make a written order, signed by him, to the following effect: "It appearing to me from the testimony produced before me on the examination that the crime of (designating it generally) has been committed, and that there is sufficient cause to believe A B guilty thereof, I order him to be held to answer the same."

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1608.

Sec. 322. **Defendant, how committed.** That if the magistrate order the defendant to be held to answer, as provided in the last section, he must make out a commitment, signed by him with his name of office, and deliver it with the defendant to the officer to whom he is committed, or if that officer be not present, to any peace officer, who must immediately deliver the defendant into the proper custody, together with the commitment.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1609.

Sec. 323. **Form of commitment.** That the commitment may be in substantially the following form:

"In the name of the United States of America.

"To the United States marshal for the District of Alaska, greeting:

"An order having been this day made by me that A B be held to answer upon a charge (designating it generally), you are therefore commanded to receive him in your custody, and detain him until legally discharged.

"Dated at , this day of , eighteen hundred and .

"C D,

"Commissioner and ex officio Justice of the Peace."

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1610.

Sec. 324. **Commitment to be directed to marshal, and how defendant to be kept.** That the commitment must be directed to the United States marshal, who must receive and detain the defendant by such means as may be necessary and proper therefor.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1612.

Sec. 325. **Order for bail on commitment.** That if the crime be bailable, the magistrate must admit the defendant to bail by adding to the order mentioned in section three hundred and twenty-one of this Title words to the following effect: "And I have admitted him to bail, to answer in a sum of dollars." The defendant may either put in bail, according to the order of admission, then or afterwards; but if it be not put in before he is delivered to the officer for commitment, the magistrate must indorse the amount of the bail on the writ.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1613.

Sec. 326. **Undertaking for material witnesses.** That on holding the defendant to answer, the magistrate may take from each of the material witnesses examined before him on behalf of the United States a written undertaking, to the effect that he will appear and testify at the court in which the defendant is held to answer, or that he will pay to the United States the sum of one hundred dollars.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1614.

Sec. 327. **Security for appearance of witnesses, when may be required.** That when the magistrate has good reason to believe, by proof produced before him, that any such witness will not appear and testify unless security therefor be given, he may order the witness to enter into a written undertaking, with such sureties and in such sum as he may deem proper, for his appearance, as specified in the last section.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1615.

Sec. 328. **Infants and married women may be required to give security.** That infants and married women who are material witnesses against the defendant may in like manner be required to procure sureties for their appearance as provided in the last section.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1616.

Sec. 329. **Witness refusing to give undertaking must be committed.** That if a witness required to enter into an undertaking to appear and testify, either with or without sureties, refuse compliance with the order for that purpose, the magistrate must commit him to the custody of the marshal until he comply or be legally discharged.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1617.

Sec. 330. **Magistrate to return proceedings and papers.** That when a magistrate has discharged a defendant or has held him to answer as provided in sections three hundred and nineteen, three hundred and twenty, and three hundred and twenty-one, of this Title he must return to the court at which the defendant is held to answer, at or before the first day of the next term thereof, the warrant, if any, the statement and depositions of the informant and his witnesses, the statement of the defendant, if he have made one, the memoranda specified in sections three hundred and eight and three hundred and fifteen, of this Title and all undertakings of bail for the appearance of witnesses taken by him.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1618.

CHAPTER THIRTY-FIVE.

OF THE PREVENTION OF CRIMES AND SECURITY TO KEEP THE PEACE.

Sec.
331. Resistance to the commission of crime, by whom made.
332. Officers of justice may interfere to prevent crime, and how.
333. Persons acting in their aid are justified.
334. Information of threatened crime, before whom laid.
335. Examination of complainant and witnesses.
336. Warrant of arrest, when issued.
337. Warrant of arrest, to whom directed, form of, and how served.
338. Proceedings on complaint being controverted.
339. Conduct of the examination as to adjournment, commitment, and bail.
340. Subpoenas, when issued.
Sec.
341. Persons complained of entitled to make statement.
342. When to be discharged.
343. Security to keep the peace, when required.
344. Qualifications of securities.
345. Persons complained of to be committed if security be not given.
346. Form of commitment.
347. Breach of peace committed in presence of court or magistrate.
348. Person committed for not giving security, how discharged.
349. Undertaking or statement to be transmitted to district court.
350. Evidence to be transmitted with undertaking.
351. Undertaking, when forfeited.

Sec.
352. Proceedings in case of forfeiture, how regulated.
353. Proceeding if complainant do not appear in district court.
354. Proceeding in district court.
355. Right of sureties in undertaking to keep the peace.
356. When court may require defendant to give security.
357. Undertaking to keep the peace to include good behavior.

Sec. 331. **Resistance to the commission of crime, by whom made.** That resistance to the commission of crime may be lawfully made by the party about to be injured, or by any other person in his aid or defense—

First. To prevent a crime against his person;

Second. To prevent an illegal attempt, by force, to take or injure property in his possession.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1619.

Sec. 332. **Officers of justice may interfere to prevent crime, and how.** That crimes may be prevented by the intervention of the officers of justice—

First. By requiring security to keep the peace;

Second. By forming a police in towns, villages, and settlements, and by requiring their attendance at exposed places;

Third. By suppressing riots.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1620.

Sec. 333. **Persons acting in their aid are justified.** That when the officers of justice act in the prevention of crime, other persons who by their command act in their aid are justified in so doing.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1621.

Sec. 334. **Information of threatened crime, before whom laid.** That an information may be laid before any of the magistrates mentioned in section two hundred and seventy-one of this Title that a person has threatened to commit a crime against the person or property of another.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1622.

Sec. 335. **Examination of complainant and witnesses.** That when the complaint is made to a magistrate, he must examine the complainant on oath, and reduce his statement to writing, and cause the same to be subscribed by him, and also take the depositions of any witnesses that the complainant may produce in support thereof.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1623.

Sec. 336. **Warrant of arrest, when issued.** That thereupon, if it appear to the magistrate that there is good reason to fear the commission of the crime threatened by the person complained of, he must issue a warrant for the arrest of such person.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1624.

Sec. 337. **Warrant of arrest, to whom directed, form of, and how served.** That the warrant must be directed and executed as a warrant of arrest, and may be substantially in the same form, except that, instead of reciting the commission of a crime, it must recite the substance of the threat to commit one, according to the information.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1625.

Sec. 338. **Proceedings on complaint being controverted.** That when the person complained of is brought before a magistrate, if the charge be controverted he must take the testimony in relation thereto, and the evidence must be reduced to writing and subscribed by the witness.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1627.

Sec. 339. Conduct of the examination as to adjournment, commitment, and bail. That the magistrate may adjourn the examination and commit the person complained of, or take bail or a deposit of money in lieu thereof, as provided in sections three hundred and two, three hundred and three, and three hundred and four of this Title.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1628.

Sec. 340. Subpoenas, when issued. That the magistrate must issue subpœnas for witnesses for the complainant or person complained of if such witnesses be within fifty miles from the place where the magistrate is sitting.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1629.

Sec. 341. Persons complained of entitled to make statement. That the person complained of is entitled, if he choose, to make a statement concerning the charges against him, as provided in sections three hundred and nine, three hundred and ten, and three hundred and eleven of this Title.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1630.

Sec. 342. When to be discharged. That if from the examination it appear that there is no good reason to fear the commission of the crime alleged to have been threatened, the person complained of must be discharged; the order for the discharge must be indorsed upon the warrant, and signed by the magistrate with his name of office, and may be to the following effect: "There being no good reason shown to fear the commission of the crime within mention by the within named A B, I order him to be discharged."

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1631.

Sec. 343. Security to keep the peace, when required. That if, however, there be good reason to fear the commission of the crime, the person complained of must be required to enter into an undertaking in such sum, not exceeding two thousand dollars, as the magistrate may direct, with one or more sufficient sureties, to abide the order of the district court, and in the meantime to keep the peace toward the people of said District, and particularly toward the complainant.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1632.

Sec. 344. Qualifications of sureties. That the sureties in the undertaking must have the qualifications of bail, and justify thereto as provided in sections two hundred and eighteen and two hundred and nineteen of this Title.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1633.

Sec. 345. Persons complained of to be committed if security be not given. That if the undertaking required by section three hundred and forty-three of this Title be given, the party complained of must be discharged; but if he do not give it, the magistrate must commit him to the custody of the marshal, specifying in the commitment the requirement to give security, the amount thereof, and the omission to give the same.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1634.

Sec. 346. Form of commitment. That the commitment may be in substantially the following form:

"In the name of the United States of America.

"To the United States marshal for the District of Alaska, greeting:

"An order having been this day made by me that A B give an undertaking in the sum of dollars, as security to keep the peace and abide the order of the district court, and the said A B having failed to give such undertaking,

you are therefore commanded to receive him into your custody, and detain him until legally discharged.

"Dated at , this day of , eighteen hundred and .

"C D,

"Commissioner and ex officio Justice of the Peace."

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1635.

Sec. 347. **Breach of peace committed in presence of court or magistrate.** That a person who, in the presence of a court or magistrate, assaults or threatens to assault another, or to commit an offense against his property, or who contends with another with angry words to the disturbance of the peace, may be ordered by the court or magistrate, without warrant or other proof, to give security as provided in section three hundred and forty-three, or if he omit to do so may be committed as provided in section three hundred and forty-five of this Title.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1637.

Sec. 348. **Person committed for not giving security, how discharged.** That a person committed for not giving an undertaking to keep the peace may, at any time thereafter, upon giving the required undertaking, be discharged from custody by the order of any magistrate before whom the information might have been laid.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1638.

Sec. 349. **Undertaking or statement to be transmitted to district court.** That an undertaking to keep the peace must be transmitted by the first day of the term to the district court by the magistrate to whom it is given; but if the person be committed for want of an undertaking, the magistrate must, in like manner, transmit a statement of the commitment.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1639.

Sec. 350. **Evidence to be transmitted with undertaking.** That with the undertaking or statement mentioned in the last section the magistrate must also transmit the evidence taken by him for and against the charge.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1640.

Sec. 351. **Undertaking, when forfeited.** That a person who has entered into an undertaking to keep the peace must appear on the first day of the next term of the district court, and abide the order thereof; and if he do not, the court must direct the fact to be entered in its journal, and the undertaking is thereupon forfeited. The undertaking is also forfeited upon the person complained of being convicted of a breach of the peace.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1641.

Sec. 352. **Proceedings in case of forfeiture, how regulated.** That sections two hundred and thirty-eight to two hundred and forty-two, of this Title inclusive, shall apply to and govern the excusing of a forfeiture of the undertaking, the remission of the forfeiture, and the prosecution of the undertaking.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1642.

Sec. 353. **Proceeding if complainant do not appear in district court.** That if the complainant do not appear at the district court, the person complained of may be discharged, unless good cause to the contrary be shown.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1643.

Sec. 354. **Proceeding in district court.** That if both parties appear, the court must hear the proofs and allegations transmitted by the magistrate, and such

other evidence as the parties may produce, and may either discharge the undertaking or require a new one, for a time not exceeding one year.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1644.

Sec. 355. **Right of sureties in undertaking to keep the peace.** That the sureties in an undertaking to keep the peace are entitled to the rights and authority of bail, as provided in chapter twenty-two of this Act, and may be exonerated from their undertaking in the manner therein prescribed.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1645.

Sec. 356. **When court may require defendant to give security.** That the court before whom any person is convicted of a crime, which by the judgment of such court is punished otherwise than by death or imprisonment in the penitentiary, may require such person to enter into an undertaking as provided in section three hundred and forty-three, of this Title for a period not exceeding two years, and in default thereof may commit him until the undertaking be given or the period expired.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1646.

Sec. 357. **Undertaking to keep the peace to include good behavior.** That an undertaking to keep the peace shall be taken and deemed to be an undertaking to be of good behavior also, and can not be required except as provided in this chapter.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1647.

CHAPTER THIRTY-SIX.

OF THE SUPPRESSION OF RIOTS.

Sec.
358. How and by whom rioters commanded to disperse.
359. If rioters do not disperse, to be arrested.
360. Consequence of refusing to aid officers.
361. Magistrate or officer neglecting to act guilty of misdemeanor.
362. Proceedings if rioters do not disperse.
363. If death ensue, who deemed guilty thereof.

Sec. 358. **How and by whom rioters commanded to disperse.** That when any persons, to the number of three or more, whether armed or not, are unlawfully or riotously assembled in any town, village, or settlement, the marshal or any deputy, the chief executive officer of such town, village, or settlement, and the commissioners as justices of the peace for the precinct where the assemblage takes place, must go among the persons assembled, or as near to them as they can with safety, and command them in the name of the United States to disperse.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1649.

Sec. 359. **If rioters do not disperse, to be arrested.** That if the persons assembled do not immediately disperse, the magistrates and officers must arrest them or cause them to be arrested, that they may be punished according to law, and for that purpose may command the aid of all persons present.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1650.

Sec. 360. **Consequence of refusal to aid officers.** That if a person so commanded to aid the magistrate or officers, or any of them, mentioned in section three hundred and fifty-eight, of this Title neglect to do so, he is deemed one of the rioters, and may be treated and is punishable accordingly.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1651.

Sec. 361. **Magistrate or officer neglecting to act, guilty of misdemeanor.** That if a magistrate or officer having notice of an unlawful or riotous assembly, mentioned in section three hundred and fifty-eight, of this Title neglect to proceed to the place of assembly, or as near thereto as he can with safety, and to exercise the authority with which he is invested for suppressing the same and arresting the offenders, he is guilty of a misdemeanor.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1652.

Sec. 362. **Proceedings if rioters do not disperse.** That if the persons assembled and commanded to disperse do not immediately disperse, any two of the magistrates or officers mentioned in section three hundred and fifty-eight of this Title may command the aid of a sufficient number of persons, armed or otherwise, as may be necessary, and may proceed in such manner as in their judgment may be most expedient to disperse the assembly and arrest the offenders.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1653.

Sec. 363. **If death ensue, who deemed guilty thereof.** That if, in the effort to suppress or disperse any unlawful or riotous assembly, or to arrest or detain any of the persons engaged therein, any such rioters or other persons then present as spectators or otherwise be killed or wounded, the magistrate and officers and persons acting in their aid are guiltless thereof; but if any such magistrate or officers or persons acting in their aid be killed or wounded, all the persons engaged in such assembly are guilty thereof. [Amended, Part 3, sec. 29, post p. —]

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1659.

CHAPTER THIRTY-SEVEN.

OF THE CORONER'S INQUEST

Sec.
364. Commissioners to act as coroners.
365. Duty of coroners.
366. To summon jury to hold inquest.
367. Oath of jury.
368. Witnesses to be subpoenaed to include physician.
369. Compelling attendance of witnesses.
370. Verdict of jury.
371. Testimony, how taken.
372. To issue warrant, when, and proceedings thereon.
373. When coroner to bury body.
374. Coroner's statement of expenses.
375. Inventory of property found on the deceased.
376. Disposition of property.

Sec. 364. **Commissioners to act as coroners.** That the commissioners appointed by the President of the United States and those appointed by the judge of the district court in pursuance of the provisions of this Act shall perform the duties and exercise the authority of coroners.

Sec. 365. **Duty of coroners.** That every such commissioner has the power, and it is his duty, when he is informed that a person has been killed or dangerously wounded by another or has suddenly died under such circumstances as to afford a reasonable ground to suspect that his death has been occasioned by criminal means or has committed suicide, to inquire by the intervention of a jury into the cause of the death or wound, and to perform the other duties incidental thereto in the manner prescribed by statute.

Hill's Ann. Laws, s. 1027.

Sec. 366. **To summon jury to hold inquest.** That in such case he must go to the place where the dead or wounded person is, and forthwith summon six persons, qualified by law to serve as jurors, to appear before him forthwith at a specified place to inquire into the cause of the death or wound.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1660.

Sec. 367. **Oath of jurors.** That when the jurors to the number of six appear, they must be sworn by the coroner to inquire who the person was, and when, where, and by what means he came to his death or was wounded, as the case may be, and into the circumstances attending the death or wounding, and to give a true verdict thereon, according to the evidence offered to them or arising from the inspection of the body.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1661.

Sec. 368. **Witnesses to be subpoenaed to include physician.** That the commissioner must subpœna and examine as witnesses every person who in his opinion has knowledge of the material facts, and also a surgeon or physician, who must, in the presence of the jury, inspect the body and give a professional opinion as to the cause of the death or wounding.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1662.

Sec. 369. **Compelling attendance of witnesses.** That for the purpose of subpœnaing witnesses, compelling them to attend and testify, and punishing them for disobedience, the commissioner shall have the power and authority conferred upon justices of the peace with respect to examinations in criminal cases.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1663.

Sec. 370. **Verdict of jury.** That when the examination is closed the jury, or two-thirds of their number, must give their verdict in writing, and signed by them, setting forth, so far as they know or have good reason to believe, who the person killed or wounded is, and when, where, and by what means he came to his death or was wounded, and whether any person, and who, is guilty of a crime thereby.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1664.

Sec. 371. **Testimony, how taken.** That the testimony of the witnesses must be reduced to writing by the commissioner, or under his direction, and the verdict of the jury delivered to him.

Laws Oreg., Oct 19, 1864; Hill's Ann. Laws, s. 1665.

Sec. 372. **To issue warrant, when, and proceedings thereon.** That if the jury find that a crime was committed in the killing or the wounding, and also charge a person with the commission of the crime, the commissioner, as a magistrate, must forthwith issue a warrant for the arrest of such person as on an information, and when the defendant is brought before him must proceed to examine the charge contained in the verdict, and hold the defendant to answer, or discharge him therefrom, in the same manner in all respects as upon a warrant of arrest.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1669.

Sec. 373. **When coroner to bury body.** That when a commissioner shall hold an inquest upon the body of a stranger or pauper, and no friend or relative appears to claim the body for burial, the commissioner must cause the same to be plainly and decently buried.

Sec. 374. **Coroner's statement of expenses.** That the commissioner must re-

turn to the district court a written statement, verified by his own oath, of the expense of any inquest or burial held by him, including his fees and the fees of jurors and witnesses, which account, upon being allowed by the district court, must be paid to the persons to whom the items thereof are due by the United States marshal, from moneys appropriated to pay the expenses of United States courts.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1670.

Sec. 375. **Inventory of property found on the deceased.** That if money or other property be found on the body, the commissioner must make an inventory of it, and take the same into his possession, which inventory he must verify and return to the district court, with the account specified in the last section.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1671.

Sec. 376. **Disposition of property.** That the commissioner must, within thirty days from the inquest, deliver the money, or other property, to the clerk of the district court. If it be other property the clerk must cause it to be sold as upon execution, and after deducting the expenses of sale, deposit the same in the manner provided in the case of moneys collected on judgments in favor of the United States. If it be money, he shall also so deposit it.

CHAPTER THIRTY-EIGHT.

OF SEARCH WARRANTS, AND PROCEEDINGS THEREON.

Sec.
377. Who may issue search warrant.
378. On what ground such warrant may issue.
379. Search warrant issued only upon probable cause.
380. Examination of complainant and his witnesses.
381. When magistrate to issue warrant, form of.
382. Power of officer in executing search warrant.
383. Officer must give receipt for property taken.
384. Property when delivered to magistrate, how disposed of.
385. Within what time warrant must be executed and returned.
386. Return of warrant and delivery of property.
387. Magistrate to give copy of inventory to whom.
388. Proceedings if grounds of issuing warrants controverted.
389. Property, when to be restored.
390. Return of magistrate.
391. When person procuring search warrant guilty of misdemeanor.
392. Person charged with crime may be searched. Disposition of weapon.

Sec. 377. **Who may issue search warrant.** That a magistrate authorized to issue a warrant of arrest has authority to issue a search warrant, directed to the peace officer, commanding him to search for personal property at any place within said District and bring it before the magistrate.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1677.

Sec. 378. **On what ground search warrant may issue.** That a search warrant may be issued upon either of the following grounds:

First. When the property was stolen or embezzled, in which case it may be taken, on the warrant, from any house or other place in which it was concealed or may be found, or from the possession of the person by whom it was stolen or embezzled, or of any other person in whose possession it may be;

Second. When the property was used as a means of committing a felony, in which case it may be taken, on the warrant, from any house or other place in

which it is concealed or may be found, or from the possession of the person by whom it was used in the commission of the offense, or of any other person in whose possession it may be;

Third. When the property is in the possession of any person with the intent to use it as the means of committing a crime, or in possession of another to whom he may have delivered it for the purpose of concealing it or preventing its being discovered, in which case it may be taken on the warrant from the possession of such person, or the person to whom he may have so delivered it, or from any house or other place occupied by them or under their control, or either of them.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1678.

Sec. 379. **Search warrant issued only upon probable cause.** That a search warrant can not be issued but upon probable cause, shown by affidavit, naming or describing the person, and describing the property and the place to be searched.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1679.

Sec. 380. **Examination of complainant and his witnesses.** That the magistrate must, before issuing the warrant, examine on oath the complainant and any witnesses he may produce and take their depositions in writing, and cause them to be subscribed by the parties making them.

Sec. 381. **When magistrate to issue warrant, form of.** That thereupon, if the magistrate be satisfied that there is probable cause to believe in the existence of the grounds of the application, he must issue the warrant, which may be in substantially the following form:

"District of Alaska, division No. .

"In the name of the United States of America.

"To the United States marshal for the District of Alaska, greeting:

"Information on oath having been this day laid before me (stating the particular grounds of the application, according to section three hundred and seventy-eight of this Title), you are therefore hereby commanded, at any time in the day or night, to make immediate search on the person of A B (or in the house situated—describing it—or any other place to be searched with reasonable particularity, as the case may be) for the following property (describing it with reasonable particularity), and if you find the same, or any part thereof, to bring it forthwith to me at (stating the place).

"Dated at , this day of , eighteen hundred and .

"C D,

"Commissioner and ex officio Justice of the Peace."

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1681.

Sec. 382. **Power of officer in executing search warrant.** That in the execution or service of a search warrant, the officer has the same power and authority, in all respects, to break open any door or window, to use all necessary and proper means to overcome any forcible resistance made to him, or to call any other person to his aid, that he has in the execution or service of a warrant of arrest.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1683.

Sec. 383. **Officer must give receipt for property taken.** That when the officer takes property under the warrant, he must give a receipt for the property taken, specifying it in detail, to the person from whom he takes it or in whose possession it is found, or in the absence of any person he must leave it in the place where he found the property.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1684.

Sec. 384. Property when delivered to magistrate, how disposed of. That when the property is delivered to the magistrate, he must, if it was stolen or embezzled, dispose of it as provided in sections two hundred and sixty-five, two hundred and sixty-six, and two hundred and sixty-nine of this Title; but if it were taken on a warrant issued on the grounds stated in subdivisions two and three of section three hundred and seventy-eight, of this Title he must retain it in his possession, subject to the order of the court to which he is required to return the proceedings before him, or any other court in which the crime in respect to which the property was taken is triable.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1685.

Sec. 385. Within what time warrant must be executed and returned. That a search warrant must be executed and returned to the magistrate by whom it was issued within ten days from its date, unless such magistrate, before the expiration of such time, shall, by indorsement thereon, extend the time for thirty days. After the expiration of the time herein prescribed, the warrant, unless executed, is void.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1686.

Sec. 386. Return of warrant and delivery of property. That the officer must forthwith return the warrant to the magistrate and deliver to him a written inventory of the property taken, made publicly or in the presence of the person from whose possession it was taken, and of the applicant for the warrant, if they be present, verified by the oath of the officer, to the following effect:

"I, A B, the officer by whom this warrant was executed, do swear that the above inventory contains a true and detailed account of all the property taken by me on the warrant."

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1687.

Sec. 387. Magistrate to give copy of inventory to whom. That the magistrate must thereupon, if required, deliver a certified copy of the inventory to the person from whose possession the property was taken and to the applicant for the warrant.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1688.

Sec. 388. Proceedings if grounds of issuing warrants controverted. That if the person from whose possession the property was taken controvert the grounds of issuing the warrant, the magistrate must proceed to examine the matter by taking testimony in relation thereto.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1689.

Sec. 389. Property, when to be restored. That if it satisfactorily appear that the property taken is not the same as that described in the warrant, or that there is no probable cause for believing the existence of the grounds on which the warrant was issued, the magistrate must cause it to be restored to the person from whom it was taken.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1690.

Sec. 390. Return of magistrate. That the magistrate must annex together the depositions, the search warrant and return, and the inventory, and return them to the district court at or before the first day of the next term thereof.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1691.

Sec. 391. When person procuring search warrant guilty of misdemeanor. That a person who maliciously and without probable cause procures a search warrant to be issued and executed is guilty of a misdemeanor.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1692.

Sec. 392. **Person charged with crime may be searched; disposition of weapon.** That when a person charged with a crime is supposed by the magistrate before whom he is brought to have on his person a dangerous weapon, or anything which may be used as evidence of the commission of the crime, the magistrate may direct him to be searched in his presence, and direct the weapon or other thing to be retained, subject to his order or the order of the court in which the defendant may be tried.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1693.

CHAPTER THIRTY-NINE.

OF PROCEEDINGS IN RELATION TO FUGITIVES FROM JUSTICE.

Sec.
393. Governor to appoint agent to demand fugitive from justice.
394. Governor may require report from district attorney.
395. Payment of expenses of agent.
396. Fugitive from justice, when to be delivered up by governor.
397. When fugitive not to be delivered, and when he may be.
398. Report of district attorney in relation to custody of fugitive.
399. When and to whom governor to issue warrant for arrest.
400. Executive warrant to direct officers and magistrate to aid in its execution.
401. Magistrate may issue warrant for arrest of fugitive.
402. Proceeding for arrest and commitment of fugitive before magistrate.
403. When magistrate to commit, and for what time.
404. Magistrate may admit person arrested to bail.
405. Magistrate to give notice to governor of commitment.
406. Person arrested to be discharged unless taken under executive warrant.
407. Person causing arrest liable for costs and expenses.

Sec. 393. **Governor to appoint agent to demand fugitive from justice.** That whenever a person charged with treason or other felony, in said district shall flee from justice the governor of said district may appoint an agent to demand such fugitive of the executive authority of any State or Territory of the United States in which he may be found.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1695; Brown v. Maryland, 12 Wheat., 19, 437; Robb v. Connelly, 111 U. S., 624; Prigg v. Commonwealth, 16 Pet., 539; Taylor v. Trainor, 16 Wall., 366; Commonwealth v. Dennison, 24 How., (U. S.) 66, 99, 103; Ex parte Smith, 3 McLean, 121.

Sec. 394. **Governor may require report from district attorney.** That before appointing such agent the governor may require the district attorney to investigate the matter and report to him the material circumstances, together with his opinion upon the expediency of allowing the application.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1696.

Sec. 395. **Payment of expenses of agent.** That the account of the agent, including his actual expenses incurred in performing the service, must be paid by the United States marshal, after being allowed by the district court, out of moneys appropriated to pay the expenses of United States courts.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1697.

Sec. 396. **Fugitive from justice, when to be delivered up by governor.** That a person charged in any State or Territory of the United States with treason, felony, or other crime, who may flee from justice and be found in said District, must, on demand of the executive authority of the State or Territory from

which he fled, be delivered up by the governor of said District, to be removed to the State or Territory making the demand.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1698.

Sec. 397. **When fugitive not to be delivered, and when he may be.** That when the person demanded is in custody in said District, either upon a criminal charge, an indictment for a crime, or a judgment upon a conviction thereof, he can not be delivered up until he is legally discharged from such custody; but if he be in custody upon civil process only, the governor may deliver him up or not before the termination of such custody, as he may deem most conducive to the public good.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1699.

Sec. 398. **Report of district attorney in relation to custody of fugitive.** That before issuing a warrant for the delivery of a fugitive from justice, the governor may require the district attorney to ascertain and report to him whether such fugitive is in custody as mentioned in the last section, and if he be so upon civil process only, whether such custody be with the consent or procurement of the fugitive.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1700.

Sec. 399. **When and to whom governor to issue warrant for arrest.** That when the governor finds that the demand is conformable to law, and the person demanded should be given up, either then or at some future time, if he be in custody, he must issue his warrant under the seal of the District, directed to the person who makes the demand, and authorizing him, either forthwith or at some future time therein designated, to take and transport the fugitive to the border line of said District at the expense of the person demanding the fugitive.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1701.

Sec. 400. **Executive warrant to direct officers and magistrate to aid in its execution.** That the executive warrant must also require all peace officers and magistrates, when requested by the person to whom the warrant is directed, to render all needful assistance in the execution thereof; and in so doing such officers or magistrates may exercise the same power and authority to prevent a rescue, an escape, or to effect a recapture, as if the fugitive was in arrest upon a charge of crime committed in said District.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1702.

Sec. 401. **Magistrate may issue warrant for arrest of fugitive.** That a magistrate authorized to issue a warrant of arrest may issue a warrant for the arrest of a person charged as provided in section three hundred and ninety-six, of this Title who shall flee from justice and be found in said District.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1703.

Sec. 402. **Proceedings for arrest and commitment of fugitive before magistrate.** That the proceedings for the arrest and commitment of the person charged are in all respects similar to those provided in this Act for the arrest and commitment of a person charged with a crime committed in said District, except that an exemplified copy of an indictment found, or other judicial proceedings had against him, in the State or Territory in which he is charged to have committed the crime, may be received as evidence before the magistrate.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1704.

Sec. 403. **When magistrate to commit, and for what time.** That if from the examination it appears that the person charged has committed the crime alleged, the magistrate must commit him to the proper custody for a time specified in the commitment, which the magistrate deems reasonable, to enable the

arrest of the fugitive under the warrant of the executive authority of said District on the requisition of the executive authority of the State or Territory in which he committed the crime, or until he be legally discharged, unless he give bail as provided in the next section.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1705.

Sec. 404. **Magistrate may admit person arrested to bail.** That the magistrate may admit the person arrested to bail by an undertaking, with sufficient sureties and in such amount as he deems proper, for his appearance before him at a time specified in the undertaking, and for his surrender to be arrested upon the warrant of the governor of said District.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1706.

Sec. 405. **Magistrate to give notice to governor of commitment.** That immediately upon the commitment of the person charged, the magistrate must inform the governor of said District of the name of the person, the cause of the arrest, and his commitment; and the governor must thereupon give the like notice to the executive authority of the State or Territory having jurisdiction of the crime, to the end that a demand may be made for the arrest and surrender of the person charged.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1707.

Sec. 406. **Person arrested to be discharged unless taken under executive warrant.** That the person arrested must be discharged from custody or bail unless, before the expiration of the time designated in the warrant or undertaking, he be arrested under the warrant of the governor of said District.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1708.

Sec. 407. **Person causing arrest liable for costs and expenses.** That the person making the complaint to the magistrate is liable for the costs and expenses of the proceedings and for the support in the jail of the person so committed; and unless he advance to the jailer or other proper officer, from week to week during the commitment, a sum sufficient for his support, the jailer or other officer having such person in custody may, upon the order of the magistrate, discharge such person from custody.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1709.

CHAPTER FORTY.

OF JUSTICES OF THE PEACE AND CONSTABLES EX OFFICIO.

Sec.
408. Additional commissioners to be appointed by court.
Sec.
409. Additional deputy marshals.

Sec. 408. **Additional commissioners to be appointed by court.** That in addition to the commissioners appointed by the President of the United States in pursuance of Acts of Congress now in force, or that may be hereafter enacted, the judge of the district court of said District may appoint commissioners, who shall reside at such places as he may designate in the order of appointment, and who shall perform the duties and exercise the powers conferred upon justices of the peace by this Act.

23 Stat. L., c. 53, s. 5; 28 Stat. L., c. 177, par. 12; Laws 55th Cong., c. 2.

Sec. 409. Additional deputy marshals. That in addition to the deputies now provided for by the Act of Congress entitled "An Act providing a civil government for Alaska," approved May seventeenth, eighteen hundred and eighty-four, the United States marshal for said District shall appoint deputies, who shall reside at such places as the judge of the district court shall from time to time designate; and all United States deputy marshals shall be ex officio constables and executive officers of the commissioners' and justices' courts, and shall have the powers and discharge the duties of constables under the provisions of this Act.

23 Stat. L., c. 53, s. 6.

CHAPTER FORTY-ONE.

OF JURISDICTION OF JUSTICES' COURTS.

Sec.
410. Criminal jurisdiction of a justice's court.

Sec. 410. Criminal jurisdiction of a justice's court. That a justice's court has jurisdiction of the following crimes:

First. Larceny, where the punishment therefor may be imprisonment in the county jail or by fine.

Second. Assault, or assault and battery, not charged to have been committed with intent to commit a felony, or in the course of a riot, or with a dangerous weapon, or upon a public officer in the discharge of his duties.

Third. Of any misdemeanor punishable by imprisonment in the county jail, or by fine, or by both.

Laws Oreg., Oct. 19, 1865; Hill's Ann. Laws, s. 2052; State v. Sly, 4 Oreg., 279.

CHAPTER FORTY-TWO.

CRIMINAL ACTION IN JUSTICES' COURTS.

Sec.
411. Proceedings in criminal action, how governed.
412. Criminal action, how commenced; person injured must appear or be subpoenaed.
413. Complaint to be deemed indictment.
414. Warrant of arrest.
415. Warrant, requisitions of.
416. Defendant, when must plead.
417. Defendant may plead same pleas as in indictment.
418. Issue, how tried.
419. Order to summon jury.
420. When jurors required to appear.
421. Officer to summon persons qualified to serve as jurors.
422. Order for jury, how served.
423. Deficiency in jurors, how supplied.
424. Challenges.
425. Verdict of jury, how given.
426. Judgment of conviction.
427. Judgment of acquittal, entry of.
428. Judgment against prosecutor for costs.
429. Judgment against prosecutor, how enforced.
430. Judgment of conviction, entry of.
431. Entry of judgment and copy of, as evidence.
432. Judgment of conviction.
433. Payment of fine and costs.
434. Money paid on judgment of conviction.
435. Action to be tried within one day, unless, etc.
436. Defendant may give bail.
437. Undertaking of bail, form of.
438. Proceeding if defendant do not give bail.
439. Form of commitment.
440. Proceeding when crime not within jurisdiction of justice.

Sec. 411. Proceedings in criminal action, how governed. That a criminal action in a justice's court is commenced and proceeded in to final determination,

and the judgment therein enforced, in the manner hereinbefore provided, except as in this chapter otherwise specially provided.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2131.

Sec. 412. **Criminal action, how commenced; person injured must appear or be subpoenaed.** That in a justice's court a criminal action is commenced by the filing of the complaint therein, verified by the oath of the person commencing the action, who is thereafter known as the private prosecutor; and no judgment of conviction or acquittal can be given in a criminal action in justice's court unless the person injured appear or be subpœnaed to attend the trial as a witness.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2132.

Sec. 413. **Complaint to be deemed indictment.** That the complaint is to be deemed an indictment within the meaning of the provisions of chapter seven, title two, of this Act, prescribing what is sufficient to be stated in such pleading and the form of stating it.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2133.

Sec. 414. **Warrant of arrest.** That upon the filing of the complaint the justice must issue a warrant of arrest for the defendant named therein.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2134.

Sec. 415. **Warrant, requisitions of.** That a warrant of arrest in a criminal action is issued, directed, and executed in all respects as the warrant provided for in chapter thirty-two, title two, of this Act, except that it must be made returnable only before the justice who issues it.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2135.

Sec. 416. **Defendant, when must plead.** That when the defendant is brought before the justice, the complaint must be read to him, and he must be required to plead thereto.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2136.

Sec. 417. **Defendant may plead same pleas as in indictment.** That the defendant may plead the same plea as upon an indictment. His plea must be oral and entered in the docket. If the defendant refuse to plead, the justice must enter the fact, together with the plea of not guilty on his behalf.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2137.

Sec. 418. **Issue, how tried.** That upon a plea other than a plea of guilty, if the defendant do not then demand a trial by jury, the justice must proceed to try the issue.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2138.

Sec. 419. **Order to summon jury.** That if a trial by jury be demanded, the justice must make an order in writing, directed to the United States marshal or any deputy, commanding him to summon twelve persons to serve as jurors in the action, at a time and place to be named therein.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2084.

Sec. 420. **When the jurors required to appear.** That the order shall require the jurors to appear before the justice forthwith, or at some future time to which the trial of the issue may be postponed.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2085.

Sec. 421. **Officer to summon persons qualified to serve as jurors.** That the

officer serving the order for a jury must do so impartially by selecting only such persons as he knows, or has good reason to believe, are qualified according to law to serve as jurors in the court to which they are summoned and in the particular action for which they are selected.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2086.

Sec. 422. Order for jury, how served. That the officer must serve the order by giving notice to each person selected of the time and place he is required to appear, and for what purpose, and return the same according to the direction therein, with the names of the persons summoned, verified by his own certificate.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2087.

Sec. 423. Deficiency in jurors, how supplied. That if a sufficient number of jurors do not appear at the time and place required, or if any of those appearing are peremptorily challenged, or upon a challenge for cause found disqualified, the justice must order the proper officer to summon a sufficient number of other qualified persons, until the jury is completed.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2088.

Sec. 424. Challenges. That each party is entitled to take challenges for cause, and to two peremptory challenges.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2139.

Sec. 425. Verdict of jury, how given. That when the jury have agreed upon a verdict, they must deliver the same to the justice publicly, who shall enter it in his docket.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2140.

Sec. 426. Judgment of conviction. That when the defendant pleads guilty, or is convicted, either by the justice or the jury, the justice must give judgment thereon for such punishment as may be prescribed by law for the crime.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2141.

Sec. 427. Judgment of acquittal, entry of. That when the defendant is found not guilty, either by the justice or a jury, he must be immediately discharged; and if it appear to the justice that the prosecution was malicious or without probable cause, he must make an entry to that effect in his docket.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2142.

Sec. 428. Judgment against prosecutor for costs. That upon making the entry prescribed in the last section, the justice must give judgment against the private prosecutor for the costs and disbursements of the action, and require him to pay the same or give satisfactory security therefor, by a written undertaking, with one or more sureties, to be approved by the justice, to pay the same to the justice within thirty days from the date of such judgment.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2143.

Sec. 429. Judgment against prosecutor, how enforced. That the judgment may be enforced against the prosecutor, if he do not pay the same or give the required security therefor, in all respects as a judgment for a fine in a criminal action; but if he give the required security therefor, said judgment may be enforced, at the expiration of the thirty days, against the prosecutor and his sureties in the undertaking in all respects as a judgment for money in a civil action.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2144.

Sec. 430. Judgment of conviction, entry of. That when a judgment of conviction is given, either upon a plea of guilty or upon a trial, the justice must enter the same in the docket substantially as follows:

"Justice's court for the precinct of , District of Alaska, division No. .
"The United States of America v. A B
(day of the month and year).

"The above-named A B having been brought before me, C D, a commissioner and ex officio justice of the peace, in a criminal action, for the crime of (briefly designate the crime), and the said A B having thereupon pleaded 'not guilty' (or as the case may be), and been duly tried by me (or by a jury, as the case may be), and upon such trial duly convicted, I have adjudged that he be imprisoned in the county jail days and that he pay the cost of the action, taxed at dollars (or that he pay a fine of dollars and such costs and be imprisoned in such jail until such fine and costs be paid, not exceeding days, as the case may be).

"C D,
"Commissioner and ex officio Justice of the Peace."

If the defendant has pleaded guilty, instead of the paragraph commencing "and the said A B," and ending "upon such trial duly convicted," the entry must state substantially as follows: "And the said A B having been thereof duly convicted upon a plea of guilty."

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2145.

Sec. 431. Entry of judgment and copy of, as evidence. That an entry of judgment and the transcript thereof, made or filed as in the last two sections provided, is conclusive evidence of the facts stated therein.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2147.

Sec. 432. Judgment of conviction. That the judgment must be executed by the United States marshal or any deputy, upon receiving a certified copy of the entry of judgment, and such copy shall also be deemed an execution against the property of the defendant for the purpose of collecting the amount of any fine or costs mentioned therein.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2148.

Sec. 433. Payment of fine and costs. That if the fine and costs, or any part thereof, be paid before commitment, they must be paid to the justice, and thereafter to the officer in whose custody the defendant may be at the time of such payment, which officer must immediately pay the same to the justice.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2149.

Sec. 434. Money paid on judgment of conviction. That any money paid to the justice upon a judgment in a criminal action must first be applied to the costs of the action, and the remainder, by such justice, paid to the clerk of the proper division of the district court, to be deposited as provided by law.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2150.

Sec. 435. Action to be tried within one day, unless, etc. That when the defendant is brought before the justice upon the warrant of arrest, the action must be tried within one day thereafter, unless continued for cause.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2152.

Sec. 436. Defendant may give bail. That at any time before the commencement of the trial, or during the progress thereof, the justice must admit the defendant to bail if he require it, and take bail of him accordingly.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2153.

Sec. 437. Undertaking of bail, form of. That the bail must be given by a written undertaking, executed by one or more sufficient sureties, approved by the justice, in substantially the following form:

"Justice's court for the precinct of , District of Alaska, division No.

"A criminal action having been commenced on the day of , eighteen hundred and , in the justice court aforesaid, against A B, for the crime of (designating it generally), and he having been duly admitted to bail by the justice of said court in the sum of dollars,

"We, C D, of (stating his place of residence and occupation), and E F, of (stating the like as to him), hereby undertake that the above-named A B shall appear at the time and place fixed for the trial of the above-mentioned action, in whatever court it may be prosecuted, and shall at all times render himself amenable to the orders and process of the court, and if convicted shall appear for judgment and surrender himself in execution thereof; or if he fail to perform either of those conditions, that we will pay to the United States the sum of dollars (inserting the sum in which the defendant is admitted to bail)."

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2154.

Sec. 438. Proceeding if defendant do not give bail. That if the defendant do not give bail when brought before the justice upon the warrant of arrest, or during the progress of the trial, he must be continued in the custody of the officer, or, if the court be held in the vicinity of a jail, be committed to jail, to answer the action as the justice may direct.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2155.

Sec. 439. Form of commitment. That the commitment must be signed by the justice, with his name of office, and may be substantially as follows:

"Justice's court for the precinct of , District of Alaska, division No. .

"In the name of the United States of America.

"To the United States marshal or any deputy:

"An order having this day been made by me that A B be committed for trial in a criminal action against said A B for the crime of (designating it generally), you are hereby commanded to receive him into your custody, and detain him accordingly, or until he be otherwise legally discharged.

"Dated at , this day of , eighteen hundred and .

"C D,

"Commissioner and ex officio Justice of the Peace."

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2156.

Sec. 440. Proceeding when crime not within jurisdiction of justice. That if, in the progress of the trial, it shall appear to the magistrate that the defendant has committed a crime not within the jurisdiction of a justice's court, such magistrate must dismiss the action, and state in the entry the reasons therefor, and hold the defendant upon the warrant of arrest, and proceed to examine the charge as upon an information of the commission of crime.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2158.

CHAPTER FORTY-THREE.

OF APPEALS IN CRIMINAL ACTIONS.

Sec.
441. Appeal in criminal action, when taken.
442. Appeal, how taken.
443. Undertaking for appeal.
444. Appeal taken by defendant only.
445. Justice must transmit transcript.
446. Undertaking for stay of proceedings.
447. Allowance of appeal and return of execution.
448. Qualification and justification of sureties.
449. Appeal, when perfected and how tried.
450. Judgment in the appellate court.
451. Defective undertaking, how cured.
452. Errors of law, how reviewed.

Sec. 441. **Appeal in criminal action, when taken.** That an appeal may be taken from a judgment of conviction given in a justice's court, in a criminal action, to the district court, except when the same is given on a plea of guilty, as prescribed in this chapter, and not otherwise.
days from the date of the entry of the judgment by serving a notice upon

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2159.

Sec. 442. **Appeal, how taken.** That an appeal may be taken within thirty the district attorney or upon the private prosecutor in the action and filing the original, with the proof of service indorsed thereon, with the justice, and by giving the undertaking for the costs of the appeal as hereinafter provided.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, ss. 2118, 2119, 2160; State v. Zingsen, 7 Oreg., 137.

Sec. 443. **Undertaking for appeal.** That the undertaking of the appellant must be given, with one or more sureties approved by the justice, to the effect that the appellant will pay all costs and disbursements that may be awarded against him on the appeal.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2120.

Sec. 444. **Appeal taken by defendant only.** That an appeal can only be taken by the defendant.

23 U. S. Stat. L., c. 53, s. 7.

Sec. 445. **Justice must transmit transcript.** That if the defendant is in custody at the time the appeal is allowed, the justice must make the proper transcript and deliver it to the clerk of the district court by the first day of the next term thereof, or transmit the same to such clerk by mail or other safe conveyance by the first day of such term.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2162.

Sec. 446. **Undertaking for stay of proceedings.** That an allowance of an appeal does not stay the proceedings on the judgment unless the defendant give the undertaking of bail on appeal as provided in section two hundred and nineteen, title two, of this Act.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2163.

Sec. 447. **Allowance of appeal and return of execution.** That when an appeal is taken, the justice must allow the same, and make an entry thereof in his docket, stating whether the proceedings are thereby stayed or not; and when the proceedings are stayed, if an execution has been issued to enforce the judgment, the justice must recall the same by written notice to

the officer holding the execution, and thereupon it must be returned, and all the property taken thereon and not sold released; and if the defendant is in custody, he must be discharged therefrom.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2122.

Sec. 448. **Qualification and justification of sureties.** That all sureties in an undertaking under the provisions of this chapter must have the qualifications of bail upon arrest, and, if required by the adverse party, must justify before the justice in like manner.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2123.

Sec. 449. **Appeal, when perfected and how tried.** That from the filing of the transcript with the clerk of the district court the appeal is perfected, and the action is to be deemed pending therein and for trial upon the issue tried in the justice's court. The appellate court has the same authority to allow an amendment of the pleadings, on an appeal in a criminal action, that it has on an appeal in a civil action.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2164.

Sec. 450. **Judgment in the appellate court.** That when an appeal is dismissed, the appellate court must give judgment as it was given in the court below, and against the appellant, for the costs and disbursements of the appeal. When judgment is given in the appellate court against the appellant, either with or without trial of the action, it must also be given against the sureties in his undertaking according to the nature and effect thereof.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2128.

Sec. 451. **Defective undertaking, how cured.** That an appeal can not be dismissed on the motion of the appellee on account of the undertaking therefor being defective, if the appellant before the determination of the motion to dismiss will execute a sufficient undertaking and file the same in the appellate court, upon such terms as may be deemed just.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2129.

Sec. 452. **Errors of law, how reviewed.** That no provision of this chapter in relation to appeals or right of appeal must be construed so as to prevent the defendant in a justice's court from having the judgment reviewed in the district court for errors in law appearing upon the face of such judgment or the proceedings connected therewith.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2169.

CHAPTER FORTY-FOUR.

OF MISCELLANEOUS PROVISIONS IN RELATION TO CRIMINAL PROCEEDINGS IN JUSTICES' COURTS.

Sec.
453. Qualification of bail.
454. Security for costs.
455. Who may act as attorney.
456. Special deputies.
457. Fees of officers, witnesses, jurors, interpreters, etc.
458. "District attorney" construed.
459. Increased bond of clerk and marshal.
460. Tax on business and trades.
461. Penalty for evasion of tax.
462. Limiting sale of intoxicating liquors and defining term "intoxicating liquor."
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477. Provisions of this Act not to interfere with Federal internal revenue laws.
478. Licensee not to allow female, minor, or person convicted of crime to sell, etc.
479. Interpretation of words "singular" and "plural."
480. When provisions of this Act shall take effect.

Sec. 453. **Qualification of bail.** That the qualifications of bail in criminal actions in justices' courts, and the justification thereof, shall be conducted in the manner hereinbefore provided for like proceedings in the district court.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2171.

Sec. 454. **Security for costs.** That the justice may, in his discretion, require the private prosecutor in a criminal action to give security for costs and disbursements before filing or receiving a complaint therein.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2172.

Sec. 455. **Who may act as attorney.** That any person may act as attorney for another in a justice's court, except a person or officer serving any process in the action or proceeding other than the subpœna.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2173.

Sec. 456. **Special deputies.** That whenever it appears to a justice that any process or order authorized to be used or made by this Act will not be served for want of an officer, such justice may appoint any suitable person not being a party to the action to serve the same; such appointment may be made by an indorsement on the process or order in substantially the following form and signed by the justice, with his name of office: "I hereby appoint A B to serve the within process, or order," as the case may be.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2173.

Sec. 457. **Fees of officers, witnesses, jurors, interpreters, etc.** That the judge of the district court or the judges of the respective divisions of the district court for the District of Alaska shall forthwith prepare, and, with the approval of the Attorney-General, promulgate necessary rules and regulations not in conflict with this Act or the general laws of the United States, for the guidance and control of the court commissioners acting as such, or acting as ex officio justices of the peace, probate judges, coroners, or civil magistrates within said District; and he or they shall also, with the approval of the Attorney-General, prepare and promulgate a bill of fees and rates of mileage and allowances for jurors, witnesses, interpreters, and other officers or persons designated to serve process, whose fees, mileage, or other allowances are not specially provided for by law, which said rules, regulations, rates of mileage, allowances, and fees so fixed, after they have been approved by the Attorney-General and promulgated by his authority, shall have the force and effect of law and the same may be modified or changed with the approval of the Attorney-General: Provided, That in no case shall the fees, mileage,

and allowances prescribed be in excess of double the fees, mileage, and allowances allowed for like services in the State of Oregon.

Sec. 458. **"District attorney" construed.** That wherever the words "district-attorney" occur in this Act they shall be construed to mean the United States attorney for said District, or any division thereof.

Sec. 459. **Increased bond of clerk and marshal.** That whenever the business of the courts in the District of Alaska shall make it necessary, in the opinion of the Attorney-General, for the clerk or marshal to furnish greater security than the official bond now required by law, a bond in a sum not to exceed seventy-five thousand dollars shall be given when required by the Attorney-General, who shall fix the amount thereof.

Sec. 460. **Tax on business and trades.** *That any person or persons, corporation or company prosecuting or attempting to prosecute any of the following lines of business within the District of Alaska shall first apply for and obtain license so to do from a district court or a subdivision thereof in said District, and pay for said license for the respective lines of business and trade as follows, to wit:*

Abstract offices, fifty dollars per annum.

Banks, two hundred and fifty dollars per annum.

Boarding houses having accommodations for ten or more guests, twenty-five dollars per annum.

Brokers (money, bill, note, and stock), one hundred dollars per annum.

Billiard rooms, twenty-five dollars per table per annum.

Bowling alleys, twenty-five dollars per annum.

Breweries, five hundred dollars per annum.

Bottling works, two hundred dollars per annum.

Cigar manufacturers, twenty-five dollars per annum.

Cigar store or stand, twenty-five dollars per annum.

Drug stores, fifty dollars per annum.

Public docks, wharves, and warehouses, one hundred dollars per annum.

Electric light plants, furnishing light or power for sale, three hundred dollars per annum.

Fisheries: Salmon canneries, four cents per case; salmon salteries, ten cents per barrel; fish-oil works, ten cents per barrel; fertilizer works, twenty cents per ton.

Freight and passenger transportation lines, propelled by mechanical power on inland waters, one dollar per ton per annum on net tonnage, custom-house measurement, of each vessel.

Gas plants, for heat or light, for sale, three hundred dollars per annum.

Hotels, fifty dollars per annum.

Halls, public, ten dollars per annum.

Insurance agents and brokers, twenty-five dollars per annum.

Jewelers, twenty-five dollars per annum.

Mines: Quartz mills, three dollars per stamp per year.

Mercantile establishments: Doing a business of one hundred thousand dollars per annum, five hundred dollars per annum; doing a business of seventy-five thousand dollars per annum, three hundred and seventy-five dollars per annum; doing a business of fifty thousand dollars per annum, two hundred and fifty dollars per annum; doing a business of twenty-five thousand dollars per annum, one hundred and twenty-five dollars per annum; doing a business of ten thousand dollars per annum, fifty dollars per annum; doing a business of under ten thousand dollars per annum, twenty-five dollars per annum; doing a business of under four thousand dollars per annum, ten dollars per annum.

Meat markets, twenty dollars per annum.

Manufactories not enumerated herein, same classification and license charges as mercantile establishments.

Physicians, itinerant, fifty dollars per annum.

Planing mills, fifty dollars per annum when not part of a sawmill.

Pawnbrokers, three hundred dollars per annum.

Peddlers, twenty-five dollars per annum.

Patent medicine venders (not regular druggists), fifty dollars per annum.

Railroads, one hundred dollars per mile per annum on each mile operated.

Restaurants, twenty-five dollars per annum.

Real-estate dealers and brokers, fifty dollars per annum.

Ships and shipping: Ocean and coastwise vessels doing local business for hire plying in Alaskan waters, one dollar per ton per annum, on net tonnage, custom-house measurement of each vessel.

Sawmills, ten cents per thousand feet on the lumber sawed.

Steam Ferries, one hundred dollars per year.

Toll-road or trail, two hundred dollars per annum.

Tobacconists, twenty-five dollars per annum.

Tramways, ten dollars for each mile or fraction thereof, per annum.

Transfer companies, fifty dollars per annum.

Taxidermists, twenty dollars per annum.

Theaters, one hundred dollars per annum.

Waterworks furnishing water for sale, fifty dollars per annum.

[Amended. For substitute see Part III, sec. 29, post, p. —.]

Sec. 461. **Penalty for doing business without license.** That any person, corporation, or company doing or attempting to do business in violation of the provisions of the foregoing section, or without having first paid the license therein required, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined, for the first offense, in a sum equal to the license required for the business, trade, or occupation; and for the second offense, a fine equal to double the amount of the license required; and for the third offense, three times the license required and imprisonment for not less than thirty days nor more than six months: Provided, That each day business is done or attempted to be done in violation of the preceding section shall constitute a separate and distinct offense: And provided further, That any person, firm, or corporation hitherto engaged in any business within the said District of Alaska mentioned in the last preceding section, or that may engage in such business at any time prior to the first day of July, anno Domini eighteen hundred and ninety-nine, shall not be deemed to have violated the provisions of this section and the last preceding section if, in the opinion of the court or judge thereof, such person, firm, or corporation shall not have had reasonable time and opportunity to apply for license as hereinbefore required.

Sec. 462. **Limiting sale of intoxicating liquors and defining term "intoxicating liquor."** That no person, corporation, or company shall sell, offer for sale, or keep for sale, traffic in, barter, or exchange for goods in said District of Alaska any intoxicating liquors, except as hereinafter provided; but this shall not apply to sales made by a person under provisions of law requiring him to sell personal property. Wherever the term "intoxicating liquors" is used in this Act, it shall be deemed to include whisky, brandy, rum, gin, wine, ale, porter, beer, hoochinoo, and all spirituous, vinous, malt, and other fermented or distilled liquors.

Sec. 463. Who shall issue licenses. *That the licenses provided for in this Act shall be issued by the clerk of the district court or any subdivision thereof, in compliance with the order of the court or judge thereof duly made and entered; and the clerk of the court shall keep a full record of all applications for license and of all recommendations for and remonstrances against the granting of licenses and of the action of the court thereon. The clerk of the court shall be entitled to receive from each applicant for a license a fee of five dollars, and no other or additional compensation shall be paid such clerk for his services in connection with such license or the issue thereof: And provided, That the clerk of said court and each division thereof shall give bond or bonds in such amount as the Secretary of the Treasury may require and in such form as the Attorney-General may approve, and all moneys received for licenses by him or them under this Act shall be covered into the Treasury of the United States, under such rules and regulations as the Secretary of the Treasury may prescribe.*

[Amended. For substitute see Part III, sec. 29, post, p. —.]

Sec. 464. Restrictions imposed before license will issue. That before any license is granted, as provided in this Act in relation to intoxicating liquor, it shall be shown to the satisfaction of said court that a majority of the white male and female residents over the age of eighteen years other than Indians within two miles of the place where intoxicating liquor is to be manufactured, bartered, sold and exchanged, or bartered, sold and exchanged, have, in good faith, consented to the manufacture, barter, sale and exchange, or the barter, sale, and exchange of the same, and the burden shall be upon the applicant or applicants to show to the satisfaction of said court that a majority of the white male citizens have consented thereto, and no license shall be granted in the absence of such evidence: Provided, That when it is made to appear that a majority of said white male and female residents over the age of eighteen years other than Indians of any one place have consented to the manufacture, barter, sale and exchange, or the barter, sale, and exchange of intoxicating liquor, no further proof of the consent of the citizens of the place where said intoxicating liquor is to be manufactured, bartered, sold and exchanged, or bartered, sold and exchanged will be required for twelve months thereafter.

Sec. 465. Before license issues applicants for must file petition. That every person applying for a license to sell intoxicating liquors in said District shall file with the clerk of the court a petition for such license, and such petition shall be considered and acted upon by the court in the order in which the same was filed and numbered. Said petition shall contain:

First. The name and residence of the applicant, and how long he has resided there.

Second. The particular place for which license is desired, designating the same by reference to street, locality, or settlement, in such manner that the exact location at which such sale of liquor is proposed may be clearly and definitely determined from the description given.

Third. The statement that the applicant is a citizen of the United States, or has declared his intention to become such; that he is not less than twenty-one years of age, and that such applicant has not been, since the passage of this Act, adjudged guilty of violating the laws governing the sale of intoxicating liquors or laws for the prevention of crime in said District.

Fourth. If any false statement is made in any part of said petition or affidavit the petitioner or petitioners shall be deemed guilty of perjury, and, upon conviction thereof, his license shall be revoked and he shall be subject to the penalties provided by law for that crime.

Fifth. That he intends to carry on such business for himself and not as an agent of any other person, and that if so licensed he will carry on such for himself and not as the agent of any other person.

Sixth. That he intends to superintend in person the management of the business licensed, and that if so licensed he will so superintend in person the management of the business so licensed.

Sec. 466. **No sale of liquor to minors, etc.** That under the license issued in accordance with this Act no intoxicating liquors shall be sold, given, or in any way disposed of to any minor, Indian or intoxicated person, or to an habitual drunkard.

Sec. 467. **License to be issued for one year.** That no license under this Act shall be issued for a greater period than one year, and no license can be transferred by the licensee to any other person except with the written consent of the court by authority whereof the same shall issue, upon application thereto in writing.

Sec. 468. **Two classes of licenses—wholesale and retail.** That the liquor licenses authorized and provided for by this Act shall be of two classes—wholesale liquor licenses and barroom licenses. Every applicant for a liquor license shall deposit the amount of the license fee with the clerk of the court at the time of filing his application for the license. If, upon consideration of the application for license by the court as provided for in this Act, the court should determine to grant the license prayed for, it shall notify the clerk and the applicant for such license in writing and the applicant shall thereupon receive his license. The fee for a wholesale license shall be two thousand dollars per annum and for a barroom or retail license in towns or settlements of one thousand five hundred population or upward one thousand five hundred dollars per annum; in towns, camps, or settlements of more than one thousand and less than one thousand five hundred population, one thousand dollars per annum. In towns, camps, or settlements of less than one thousand population, five hundred dollars per annum: Provided, That the words towns, camps, or settlements as herein used shall be construed to embrace the population within a radius of two miles of the site of the place wherein business is to be done under the license. A retail or barroom license shall be required for every hotel, tavern, boat, barroom, or other place in which intoxicating liquors are sold by retail. A wholesale liquor license shall only authorize the licensee to sell distilled, malt, or fermented liquors, wines, and cordials in quantities not less than one gallon, not to be drunk upon the premises where sold; and no such license shall be granted until it is satisfactorily shown that the place where it is intended to carry on such business is properly arranged for selling such liquors as merchandise. Every place where distilled, malt, or fermented wines, liquors, or cordials are sold in quantities as prescribed for retail dealers by section thirty-two hundred and forty-four, Revised Statutes of the United States, to be drunk upon the premises, shall be regarded as a barroom; and the possession of malt, distilled, fermented, or any intoxicating liquors, with the means and appliances for carrying on the business of dispensing the same to be drunk where sold, shall be prima facie evidence of a barroom within the meaning of this Act, and the license therefor shall be known as a barroom license: Provided, That no license shall be granted for the sale of liquors at either wholesale or retail in any other than a substantial building which shall have cost for construction not less than five hundred dollars.

Sec. 469. **License to be displayed.** That every person receiving a license

to sell under this Act shall frame it under glass and place it in a conspicuous place in his chief place of sale of such liquor, so that anyone entering such place of sale may easily read such license.

Sec. 470. **Examination of premises.** That all applicants for license and persons holding licenses shall allow the clerk of the court, or any United States marshal or deputy United States marshal, or any United States commissioner, full opportunity and every facility to examine at any time during business hours the premises where intoxicating liquor is sold, and for which a license has been asked or has been granted.

Sec. 471. **Restrictions on druggists.** That druggists and apothecaries shall not be required to obtain license under the provisions of this Act, but they shall not sell intoxicating liquors, nor compound nor mix any composition thereof, except upon the written prescription of a reputable physician, nor more than once on any one prescription of the physician; and every druggist or apothecary shall keep a book for the special purpose, and enter therein the date of every sale of intoxicating liquor made by him, the person to whom sold, the kind, quantity, and price thereof, and purpose for which it was sold; and such book shall be at all times open to the inspection of the United States marshal or any deputy marshal, any United States commissioner, the collector of customs or any deputy collector of customs for the district of Alaska, and shall be produced when required; and any failure to comply with the provisions of this section shall render such druggist or apothecary so failing liable to the same penalties as if he had sold intoxicating liquors without a license.

Sec. 472. **Penalty for selling liquors without license.** That anyone engaging in the sale of intoxicating liquors, as specified in this Act, in the District of Alaska, who is required by it to have a license as herein specified, without first having obtained a license to do so as herein provided, or any person who shall engage in such sale in any portion of the District where the sale thereof is prohibited, upon conviction thereof shall be fined not less than one hundred dollars nor more than two thousand dollars, or be imprisoned for not less than one month nor more than one year; and upon every subsequent conviction of a like offense shall, in addition to the penalty above named, be imprisoned not less than two months nor more than one year.

Sec. 473. **Penalty for violating license.** That any person, having obtained a license under this Act, who shall violate any of its provisions, shall, upon conviction of such violation, be fined not less than fifty dollars nor more than two hundred dollars, and upon every subsequent conviction of such violation during the year for which such license is issued shall be fined a like amount, and in addition to such fine shall pay a sum equal to twenty-five per centum of the amount of the fine imposed for the offense immediately preceding, and have his license revoked, and in case of nonpayment of the fines and penalties above named shall be imprisoned for a period of time not exceeding six months, or till the same are paid. That after second conviction no license shall thereafter be granted to said party: Provided, That no minor under sixteen years of age shall be allowed to enter any place where liquors are sold other than retail, without the consent of the parent or guardian of such minor.

Sec. 474. **Procedure.** That prosecutions for violations of the provisions of this Act shall be on information filed in the district court or any subdivision thereof, or before a United States commissioner, by the United States marshal or any deputy marshal, or by the district attorney or by

any of his assistants. Or such prosecution may be by and through indictment by grand jury, and it shall be the duty of either of said officers, on the representation of two or more reputable citizens, to file such information, or to present the facts alleged to constitute violations of the law to the grand jury.

Sec. 475. **Proximity to schools, etc.** That license for any of the purposes specified shall not be granted to any person to conduct such business within four hundred feet of a public schoolhouse, private school, or house of religious worship, except in such places of business as may have been located previous to the erection or occupation of such schoolhouse, private school, or house of religious worship owned or occupied in the District of Alaska, measured between the nearest entrance to each by the shortest course of travel between such place of business and the schoolhouse, private school, or house of religious worship.

Sec. 476. **Renewal of licenses, etc.** That all applicants who have had a license during the preceding year shall apply for a renewal of such license on or before November first of each license year, and shall be permitted to continue business until license shall be granted or refused by the court or judge thereof; but in all cases of refusal to grant license such proportion of the license fee as may have become due shall be deducted and retained from the sum deposited therefor as the time from the first day of November to the date of such refusal bears to the entire license year, and no other person shall be permitted to conduct said business until a license is issued therefor.

Sec. 477. **Internal revenue laws unaffected.** That nothing in this Act shall in any way repeal, conflict, or interfere with the public general laws of the United States imposing taxes on the manufacture and sale of intoxicating liquors for the purpose of revenue and known as the "Internal Revenue laws."

Sec. 478. **Employment of minors, etc., to retail forbidden.** That no licensee under a barroom license shall employ, or permit to be employed, or allow any female or minor or person convicted of crime, to sell, give, furnish, or distribute any intoxicating drinks or any admixture thereof, ale, wine, or beer to any person or persons. And no licensee in any place shall knowingly sell or permit to be sold in this establishment any intoxicating liquor of any kind to any person under the age of twenty-one years, under the penalty, upon due conviction thereof, of forfeiting such license, and no person so forfeiting his license shall again be granted a license for the term of two years.

Sec. 479. **Interpretation of words.** That in the interpretation of this Act words of the singular number shall be deemed to include their plurals, and that words of the masculine gender shall be deemed to include the feminine, as the case may be.

Sec. 480. **When provisions of this act shall take effect.** That the provisions of this Act shall take effect and be in force on and after the first day of July, anno Domini eighteen hundred and ninety-nine.

Sec. 481. **Imposing less than minimum penalty.** That in any case where a conviction occurs, except in a case of murder or rape, the court may, when in its opinion the facts and circumstances are such as to make the minimum penalty provided in this Act manifestly too severe, impose a less penalty, either of fine or imprisonment, or both: Provided, That in any such case the court shall cause the reasons for its action to be set forth at large on the record in the case.

APPENDIX.

Referred to in section forty of Title II of this Act, and containing the manner of stating the act constituting the crime.

The forms of this appendix are held to be sufficient in State v. Dodson, 4 Oreg., 64, and State v. Spencer, 6 Ibid., 152; Laws Oreg., Oct. 19, 1864.

NO. 1. IN AN INDICTMENT FOR MURDER.

Purposely and of deliberate and premeditated malice killed C D by (shooting him with a gun or pistol, or by administering to him poison, or by pushing him into the water, whereby he was drowned, or by throwing him from the window of a building, or by means unknown to the grand jury, as the case may be.)

NO. 2. IN AN INDICTMENT FOR MURDER COMMITTED IN THE COMMISSION OR ATTEMPT TO COMMIT RAPE, ARSON, ROBBERY, OR BURGLARY.

Was engaged in the commission (or attempt to commit, as the case may be) of arson, by (stating it, as in an indictment therefor). And the said A C, while engaged in the commission (or attempt to commit, as the case may be) of such arson, by his act killed C D, by (striking him with a club, or by other means, or means unknown to the grand jury, to be stated as in number one).

NO. 3. IN AN INDICTMENT FOR MURDER IN THE SECOND DEGREE.

Purposely and maliciously killed C D by (shooting him with a gun or pistol, or by other means, to be stated as in number one).

NO. 4. IN AN INDICTMENT FOR MURDER IN THE SECOND DEGREE COMMITTED IN THE COMMISSION OR ATTEMPT TO COMMIT A FELONY.

Was engaged in the commission (or attempt to commit, as the case may be) of the following felony (stating it as in an indictment therefor).

And the said A B, while engaged in the commission (or attempt, as the case may be), by his act killed C D, by (striking him with a club, or by other means, to be stated as in number one).

NO. 5. IN AN INDICTMENT FOR MANSLAUGHTER.

Voluntarily killed C D by (shooting him with a gun or pistol, or by other means, to be stated as in number one).

NO. 6. MANSLAUGHTER BY ASSISTING ANOTHER TO COMMIT SELF-MURDER.

Purposely and deliberately assisted or procured one C D to commit self-murder, which crime the said C D then and there committed by (hanging

himself by the neck until he was dead, or by other means, to be stated as in number one).

Laws Oreg., Oct. 19, 1864.

NO. 7. IN AN INDICTMENT FOR RAPE.

Forcibly ravished C D, a woman of the age of fourteen years or upwards, or carnally knew a female child under the age of fourteen years (as the case may be).

NO. 8. IN AN INDICTMENT FOR ARSON.

Willfully and maliciously set fire to (or burned) a dwelling house of another, namely, C D (or whose name is unknown to the grand jury).

NO. 9. IN AN INDICTMENT FOR ROBBERY.

Feloniously took a gold watch (or as the case may be) from the person of C D, and against his will, by violence to his person (or by putting him in fear of some immediate injury to his person).

NO. 10. ROBBERY, BEING ARMED WITH A DANGEROUS WEAPON.

Being armed with a dangerous weapon, did commit an assault upon one C D, with intent, if resisted, to kill or wound the said C D, and then and there feloniously took a gold watch (or as the case may be) from the person of the said C D, and against his will.

NO. 11. IN AN INDICTMENT FOR LARCENY.

Feloniously took and carried away a gold watch (or as the case may be), the personal property of C D (or of a person whose name is unknown to the grand jury), of the value of more than thirty-five dollars.

NO. 12. LARCENY IN A DWELLING HOUSE.

Feloniously took and carried away in a dwelling house (or other house, ship, or boat, as the case may be) a gold watch (or as the case may be), the personal property of C D (or of a person whose name is unknown to the grand jury).

NO. 13. IN AN INDICTMENT FOR BURGLARY.

Broke and entered a dwelling house in which there was at the time a human being, namely, one C D (or whose name is unknown to the grand jury, as the case may be), with intent to commit larceny (or other crime, describing it generally) therein, by forcibly bursting or breaking the wall (or an outer door, or a window, or a shutter of a window) of such house (or as the case may be).

NO. 14. BURGLARY AFTER ENTERING WITH INTENT TO COMMIT CRIME.

Having entered a dwelling house, in which there was at the time a human being, namely, one C D (or whose name is unknown to the grand jury, as the

case may be), with intent to commit larceny (or other crime, describing it generally) therein, broke such dwelling house by forcibly bursting or breaking the wall (or by other means to be stated as in number thirteen), or (following the words therein) was armed with a dangerous weapon therein, or committed an assault upon C D, a person lawfully then in such house.

NO. 15. IN AN INDICTMENT FOR FORGERY.

Forged (or falsely made, altered, or counterfeited, or as the case may be) an instrument purporting to be (or being) the last will and testament of C D, devising certain property with intent to defraud or injure.

Laws Oreg., Oct. 19, 1864.

NO. 16.

Forged a certificate purporting to have been issued by J C, an officer duly authorized to make such certificate, of the acknowledgment of C D of the execution by him of a conveyance to E F of certain real property, with intent to defraud or injure.

NO. 17.

Counterfeited a gold (or silver) coin of the of Mexico, called a dollar, which was at that time current by law or usage within this district.

NO. 18. IN AN INDICTMENT FOR PERJURY.

On his examination as a witness, duly sworn to testify the truth, in the trial of an action at law in the court of , between C D, plaintiff, and E F, defendant, which court had authority to administer said oath, he testified falsely, that (stating the facts alleged to be false), the matters so testified being material, and the testimony being willfully false.

NO. 19. IN AN INDICTMENT FOR POLYGAMY.

Having a wife (or husband) then living, unlawfully married one C D, or simultaneously, or on the same day, unlawfully married C D and E F.

NO. 20. IN AN INDICTMENT FOR LIBEL.

Published or caused to be published in a newspaper called the the following libel concerning C D (stating the matter published).

Approved, March 3, 1899.

PART THREE.

THE POLITICAL CODE.

JUNE 6, 1900.

An Act making further provision for a civil government for Alaska, and for other purposes.

TITLE 1.

CHAPTER ONE.

OF THE SEAT OF GOVERNMENT, OFFICERS, COURTS, ETC.

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Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled:

Sec. 1. Seat of government. That the territory ceded to the United States by Russia by the treaty of March thirtieth, eighteen hundred and sixty-seven, and known as Alaska, shall constitute a civil and judicial district, the government of which shall be organized and administered as hereinafter provided. The temporary seat of government of said district is hereby established at Juneau: Provided, That the seat of government shall remain at Sitka until suitable grounds and buildings thereon shall be obtained by purchase or otherwise at Juneau.

Sec. 2. Governor; appointment and duties. There shall be appointed for the district a governor, who shall reside therein during his term of office and be charged with the interests of the United States Government within the district. To the end aforesaid he shall have authority to see that the laws enacted for the district are enforced and to require the faithful discharge of their duties by the officials appointed to administer the same. He may also grant reprieves for offenses committed against the laws of the district or of the United States until the decision of the President thereon shall be made known. He shall be ex officio commander in chief of the militia of the district,

and shall have power to call out the same when necessary to the due execution of the laws and to preserve the peace, and to cause all able-bodied citizens of the United States in the district to enroll and serve as such when the public exigency demands; and he shall perform generally in and over said district such acts as pertain to the office of governor of a Territory, so far as the same may be made or become applicable thereto.

He shall, subject to the direction and approval of the Secretary of the Interior, advertise for and receive bids and, in behalf of the United States, contract from year to year with the (a) responsible asylum or sanitarium west of the main range of the Rocky Mountains submitting the lowest bid for the care and custody of persons legally adjudged insane in said district of Alaska; the cost of advertising for bids, executing the contract, and caring for the insane to be paid, until otherwise provided by law, by the Secretary of the Treasury, out of any money in the Treasury not otherwise appropriated, on accounts and vouchers duly approved by the governor and the Secretary of the Interior.

The governor shall from time to time inquire into the operations of any person, company, association, or corporation authorized by the United States, by contract or otherwise, to kill seal or other fur-bearing animals in the district, and any and all violations by such person, company, association, or corporation of the agreement with the United States under which the operations are being conducted, and shall annually report to Congress the result of such inquiries.

He shall make an annual report, on the first day of October in each year, to the President of the United States, of his official acts and doings, and of the condition of the district, with reference to its resources, industries, population, and the administration of the civil government thereof. And the President of the United States shall have power to review and to confirm or annul any reprieves granted or other acts done by him.

The governor may appoint and commission one or more notaries public for the district, and appointments of notaries public heretofore made by him are hereby legalized, and all acts performed by them by virtue of their notarial commissions shall be for all purposes as valid as though the governor had at the time full and complete legal authority to appoint and commission them.

Sec. 3. **Surveyor-general ex officio secretary of the district.** The surveyor-general of the district shall be ex officio secretary thereof, and as such shall be custodian of the district seal, which shall be provided by the Attorney-General. The surveyor-general, as ex officio secretary of the district, shall perform the official duties required by law to be performed by the secretary of a Territory of the United States, in so far as applicable to said district, and such other duties as may be required by law.

Sec. 4. **District court.** There is hereby established a district court for the district, which shall be a court of general jurisdiction in civil, criminal, equity, and admiralty causes; and three district judges shall be appointed for the district, who shall, during their terms of office, reside in the divisions of the district to which they may be respectively assigned by the President.

The court shall consist of three divisions. The judge designated to preside over division numbered one shall, during his term of office, reside at Juneau, and shall hold at least four terms of court in the district each year, two at Juneau and two at Skagway, and the judge shall, as near January first as practicable, designate the time of holding the terms during the current year.

The judge designated to preside over division numbered two shall reside at Saint Michaels during his term of office, and shall hold at least one term

of court each year at Saint Michaels, in the district, beginning the third Monday in June.

The judge designated to preside over division numbered three shall reside at Eagle City during his term of office, and shall hold at least one term of court each year at Eagle City, in the district, beginning on the first Monday in July: Provided, The Attorney-General may for cause change the place of residence of the judge or either division of the court.

Each of the judges is authorized and directed to hold such special terms of court as may be necessary for the public welfare or for the dispatch of the business of the court, at such times and places in the district as they or any of them, respectively, may deem expedient or as the Attorney-General may direct; and each shall have authority to employ interpreters and to make allowances for the necessary expenses of his court, and to employ an official court stenographer under the same terms and conditions as are, or may be, provided for district courts of the United States. At least thirty days' notice shall be given by the judge or the clerk of the time and place of holding special terms of the court.

Sec. 5. **Change of place of trial.** The jurisdiction of each division of the court shall extend over the district of Alaska, but the court in which the action is pending may, on motion, change the place of trial in any action, civil or criminal, from one place to another place in the same division or to a designated place in another division in either of the following cases:

First. When there is reason to believe that an impartial trial can not be had therein;

Second. When the convenience of witnesses and the ends of justice would be promoted by the change;

Third. When from any cause the judge is disqualified from acting; but in such event, if the judge of another division will appear and try the action, no change of place of trial must be made;

Fourth. By the court, on its own motion, when, considering available means of travel, it appears that the defendant will be put to unnecessary expense and inconvenience if summoned to defend in the place or division in which the action has been commenced; and when it appears to the satisfaction of the court, or judge thereof, that an action has been commenced in a place or division remote from the residence of the defendant for the purpose of causing unnecessary expense or inconvenience, the place of trial shall be changed at the cost of the plaintiff, and such costs shall not be recovered from the defendant.

In any criminal prosecution the court shall change the place of trial where it appears to the satisfaction of the court that the defendant will not be prejudiced thereby and that the United States will be put to unnecessary expense in such criminal prosecution if the transfer is not made.

Sec. 6. **Commissioners.** The respective judges of the court shall appoint, and at pleasure remove, clerks and commissioners in and for the district, who shall have the jurisdiction conferred by law in any part thereof, but who shall, during their terms of office, each reside at the place in the district designated in the respective orders of appointment.

The commissioners shall be ex officio justices of the peace, recorders, and probate judges, and shall perform all the duties and exercise all the powers, civil and criminal, imposed or conferred on the United States commissioners by the general laws of the United States and the special laws applicable to the district.

They shall also have power to grant writs of habeas corpus for the purpose of inquiring into the cause of restraint of liberty, which writs shall be made

returnable before a district judge, and like proceedings shall be had thereon as if the same had been granted by the judge under the general laws of the United States in such cases. The commissioners shall also have the powers of notaries public, and shall keep a memorandum of all deeds and other instruments of writing acknowledged before them and relating to the title to or transfer of property within the district which memorandum shall be subject to public inspection. And all records of instruments of writing hitherto made by any United States commissioner in the district of Alaska are hereby declared to be public records of such district and shall have the same force and effect as if recorded in conformity with the provisions of this Act.

The commissioners shall also keep a record of all fines and forfeitures received by them, and shall pay over the same quarterly to the clerk of the division of the district court in which they were appointed.

Sec. 7. **Clerks of district court.** Three clerks shall be appointed for the court, one of whom shall be assigned to each division thereof, and during his term of office reside at the place designated for the residence of the judge of such division. Each clerk shall, in his division of the district, perform the duties required or authorized by law to be performed by clerks of United States courts in other districts, and such other duties as may be prescribed by the laws of the United States relating to the district of Alaska. He shall preserve copies of all laws applicable to the district and shall preserve all records and record all proceedings and official acts of his division of the court. He shall also receive all moneys collected from licenses, fines, forfeitures, or in any other case, except from violations of the customs laws, and shall apply the same to the incidental expenses of the proper division of the district court and the allowance thereof as directed by the judge, and shall account for the same in detail and for any balances on account thereof quarterly to and under the direction of the Secretary of the Treasury. He shall be ex officio recorder of instruments, as hereinafter provided, and also register of wills for the district, and shall establish secure offices where terms of his division of the court are held for the safe-keeping of his official records.

Sec. 8. **District attorneys.** Three district attorneys shall be appointed for the district, to be assigned to the divisions thereof, who shall reside during their respective terms of office at the place designated as the residence of the judge of the division of the court to which each of the district attorneys shall be assigned. They shall each perform the duties required to be performed by United States district attorneys in other districts, and such other duties as may be required by law.

Each district attorney may, subject to the approval of the Attorney-General, appoint and at pleasure remove one or more assistant district attorneys, who shall receive such compensation as the Attorney-General may fix, to be paid as other assistant United States district attorneys are paid. In case of the death or disability of a district attorney the judge may appoint a suitable person to fill the office until his successor is appointed and qualified or until the disability is removed.

Sec. 9. **United States marshals.** A marshal shall be appointed for each division of the district, and each marshal shall have authority and be required to appoint, subject to the approval of the Attorney-General, such deputy marshals as he may deem necessary for the efficient execution of the law and the orders of the court and of the commissioners appointed as herein provided.

That when in the opinion of the Attorney-General the public interest

requires it, he may, on the recommendation of the marshal, which recommendation shall state the facts as distinguished from conclusions, showing necessity for the same, allow the marshals to employ necessary office deputies and clerical assistance, upon salaries to be fixed by the Attorney-General, from time to time, and paid as other officers of the court are paid. When any of such office deputies is engaged in the service or attempted service of any writ, process, subpœna, or other order of the court, or when necessarily absent from the place of its regular employment upon official business, he shall be allowed his actual traveling expenses only, and his necessary and actual expenses for lodging and subsistence, not to exceed four dollars per day, and the necessary actual expenses in transporting prisoners, including necessary guard hire; and he shall make and render accounts thereof as provided for.

Each marshal shall have the general authority and powers and be subject to the obligations of United States marshals in the States and Territories. He shall be the executive officer of the court, and charged with the execution of all processes thereof and with the transportation and custody of prisoners and insane persons, and he shall be ex officio keeper of the jails and penitentiaries of the division of the district to which he may be assigned, and shall be responsible on his official bond for the acts of all deputy marshals appointed by him. In case of the death of a marshal the district judge shall appoint a suitable person to fill the vacancy until his successor is appointed and qualified. The persons so appointed shall give such bonds as the court may require.

The marshal shall deliver persons duly adjudged insane in the district to the authorities of such asylum or sanitarium as the governor, with the approval of the Secretary of the Interior, may designate, and for the service of process in connection with and the guarding and transportation of the insane he shall be compensated as in the case of prisoners.

The deputy marshals shall be ex officio constables and executive officers of the commissioners herein provided for, and shall have the powers and discharge the duties of United States deputy marshals, and also those of constables, under the laws of the United States applicable to said district.

Sec. 10. Appointment and compensation of officers. The governor, surveyor-general, attorneys, judges, and the marshals provided for in this Act shall be appointed by the President, by and with the advice and consent of the Senate, and shall hold their respective offices for the term of four years and until their successors are appointed and qualified, unless sooner removed by the President for cause.

The officers so appointed shall severally be entitled to receive annual compensation as follows:

The governor, the sum of five thousand dollars; the surveyor-general and ex officio secretary of the district, as full compensation, four thousand dollars; the judges, each the sum of five thousand dollars; each marshal, the sum of four thousand dollars; the clerks, each the sum of three thousand five hundred dollars; the district attorneys, each three thousand dollars, the salaries payable from the Treasury of the United States, as like officers are paid in other districts.

Each clerk shall collect all money arising from the fees of his office or on any other account authorized by law to be paid to or collected by him, and shall report the same and the disposition thereof in detail, under oath, quarterly, or more frequently if required, to the court, the Attorney-General, and the Secretary of the Treasury, and all public money received by him and his deputies for fees or on any other account shall be paid out by the clerk on

the order of the court, duly made and signed by the judge, and any balance remaining in his hands after all payments ordered by the court shall have been made shall be by him covered into the Treasury of the United States at such times and under such rules and regulations as the Secretary of the Treasury may prescribe. The clerk may employ necessary clerical help with the approval and at compensation to be fixed by the court to aid him in the expeditious discharge of the business of his office. Any person so employed shall be paid by the clerk on the order of the court, as other court expenses are paid.

The governor, surveyor-general, marshals, judges, clerks of court, and district attorneys shall, in addition to their salaries, be paid their actual traveling and subsistence expenses when traveling in the discharge of their official duties. Accounts for such expenses shall be rendered and paid as are accounts of judges, marshals, clerks and district attorneys for like expenses in other districts.

In case of the death, removal, resignation, or absence of the governor from the district, the surveyor-general as ex officio secretary of the district shall have, and he is hereby authorized and required to execute and perform, all the powers and duties of the governor during such vacancy or absence, or until another governor shall be appointed to fill such vacancy.

Sec. 11. **Fees of commissioners and deputy marshals.** An accurate detailed account of all fees received and disbursements made by commissioners and deputy marshals shall be filed quarterly with the clerk for the proper division of the district court and approved by the judge thereof, if found to be in accordance with law; and all net fees received in excess of the sum of three thousand dollars per annum by any commissioner or deputy marshal shall be annually paid to the clerk of the proper division of the court and by him paid into the Treasury of the United States, such payment to be accompanied by a verified detailed statement of such deputy or commissioner.

Sec. 12. **Bonds of clerks.** The clerks of the court shall each, before entering upon the duties of his office, execute a bond, with sufficient sureties, to be approved by the Secretary of the Treasury, or the court or a judge thereof, in the penalty of twenty thousand dollars, for the faithful performance of his official duties, and file the same with the Attorney-General; and each commissioner shall, before entering upon the duties of his office, execute a bond, with sufficient sureties, to be approved by the court, or a judge thereof, in the penalty of one thousand dollars, for the faithful performance of his official duties, and file the same with the clerk, who shall send a certified copy thereof to the Attorney-General.

Sec. 13. **Recording divisions.** The judges of the district, or a majority of them, shall, as soon as practicable after their appointment, meet, and by appropriate order, to be thereafter entered in each division of the court, divide the district into three recording divisions, designate the division of the court to supervise each, and also define the boundaries thereof by reference to natural objects and permanent landmarks or monuments, in such manner that the boundaries of each recording division can be readily determined and become generally known from such description, which order shall be given publicity in such manner by posting, publication, or otherwise as the judges or any division of the court may direct, the necessary expense of the publication of such order and description of the recording divisions to be allowed and paid as other court expenses.

At any regular or special term an order may be made by the court establishing one or more recording districts within the recording division under

the supervision of such divison of the court and defining the boundaries thereof by reference to natural objects and permanent landmarks or monuments, in such manner that the boundaries thereof can be readily determined.

The order establishing a recording district shall designate a commissioner to be ex officio recorder thereof, and shall also designate the place where the commissioner shall keep his recording office within the recording district:

Provided, The clerk of the court shall be ex officio recorder of all that portion of the recording division under the supervision of his division of the court not embraced within the limits of a recording district established, bounded, and described therein as authorized by this Act, and when any part of the division for which a clerk has been recording shall be embraced in a recording district, such clerk shall transcribe that portion of his records appertaining to such district and deliver the same to the commissioner designated as recorder thereof.

Whenever it appears to the satisfaction of the court that the public interests demand, or that the convenience of the people require, the court may change or modify the boundaries or discontinue a recording district or change the location of the recording office, or remove the commissioner acting as ex officio recorder, and appoint another commissioner to fill the office.

Sec. 14. Duties of recorders. The clerk as ex officio recorder must procure such books for records as the business of his office requires and such as may be required by the respective commissioners designated as recorders in his division of the court, but orders for the same must first be obtained from the court or the judge thereof. The respective officers acting as ex officio recorders shall have the custody and must keep all the books, records, maps, and papers deposited in their respective offices, and where a recorder is removed or from any cause becomes unable to act, or a recording district is discontinued, the records and all books, papers, and property relating thereto shall be delivered to the clerk or such officer or person as the court or judge thereof may direct.

The record books procured by the clerk, as herein provided, shall be paid for by him, on the order of the court, out of any moneys in his hands, as other court expenses are paid.

Sec. 15. Instruments subject to record. The respective recorders shall, upon the payment of the fees for the same prescribed by the Attorney-General, record separately, in large and well-bound separate books, in fair hand:

First. Deeds, grants, transfers, contracts to sell or convey real estate and mortgages of real estate, releases of mortgages, powers of attorney, leases which have been acknowledged or proved, mortgages upon personal property;

Second. Certificates of marriage and marriage contracts and births and deaths.

Third. Wills devising real estate admitted to probate;

Fourth. Official bonds;

Fifth. Transcripts of judgments which by law are made liens upon real estate;

Sixth. All orders and judgments made by the district court or the commissioners in probate matters affecting real estate which are required to be recorded;

Seventh. Notices and declaration of water rights;

Eighth. Assignments for the benefit of creditors;

Ninth. Affidavits of annual work done on mining claims;

Tenth. Notices of mining location and declaratory statements;

Eleventh. Such other writings as are required or permitted by law to be recorded, including the liens of mechanics, laborers, and others: Provided,

Notices of location of mining claims shall be filed for record within ninety days from the date of the discovery of the claim described in the notice, and all instruments shall be recorded in the recording district in which the property or subject-matter affected by the instrument is situated, and where the property or subject-matter is not situated in any established recording district the instrument affecting the same shall be recorded in the office of the clerk of the division of the court having supervision over the recording division in which such property or subject-matter is situated.

Sec. 16. **Recorder failing to record instrument.** Any clerk or commissioner authorized to record any instrument who having collected fees for so doing fails to record such instrument shall account to his successor in office, or to such person as the court may direct, for all the fees received by him for recording any instrument on file and unrecorded at the expiration of his official term, or at the time he is required to transfer his records to another officer under the direction of the court. And any clerk or commissioner who fails, neglects, or refuses to so account for fees received and not actually earned by the recording of instrument shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined not less than one hundred dollars nor more than one thousand dollars, and imprisoned for not more than one year, or until the fees received and unearned as aforesaid shall have been properly accounted for and paid over by him, as hereinbefore provided. And in addition such fees may be recovered from such clerk or commissioner or the bondsmen of either, in a civil action which shall be brought by the district attorney, in the name of the United States, to recover the same; and the amount when recovered shall be by the court transferred to the successor in office of such recorder, who shall thereupon proceed to record the unrecorded instruments: Provided, Miners in any organized mining district may make rules and regulations governing the recording of notices of location of mining claims, water rights, flumes and ditches, mill sites and affidavits of labor, not in conflict with this Act or the general laws of the United States; and nothing in this Act shall be construed so as to prevent the miners in any regularly organized mining district not within any recording district established by the court, from electing their own mining recorder to act as such until a recorder therefor is appointed by the court: Provided further, All records heretofore regularly made by the United States commissioner at Dyea, Skagway, and the recorder at Douglas City, not in conflict with any records regularly made with the United States commissioner at Juneau, are hereby legalized. And all records heretofore made in good faith in any regularly organized mining district are hereby made public records, and the same shall be delivered to the recorder for the recording district including such mining district within six months from the passage of this Act.

Sec. 17. **Qualifications of notaries public.** Every person appointed as a notary public must at the time of his appointment be a resident of the district and must continue to reside therein during his term of office. Removal from the district vacates his office and is equivalent to resignation.

The term of office of a notary public shall be four years from and after the date of his commission, but he may be sooner removed by the governor for misconduct in office.

Sec. 18. **Duties of notaries public.** It shall be the duty of a notary public—

First. When requested, to demand acceptance and payment of foreign, domestic, and inland bills of exchange, or promissory notes, and protest the same for nonacceptance and nonpayment, and to exercise such other powers and duties as by the law of nations and according to commercial usages or

by the laws of any State, government, or country may be performed by notaries, and keep a record of such acts.

Second. To take acknowledgment or proof of powers of attorney, deeds, mortgages, grants, transfers, and other instruments of writing executed by any person and to give a certificate of such proof or acknowledgment indorsed or attached to the instrument.

Third. To take depositions and affidavits and administer oaths and affirmations in all matters incident to the duties of the office or to be used before any court, judge, or officer.

Fourth. When requested and upon payment of his fees therefor to make and give a certified copy of any record in his office.

Fifth. To provide and keep an official seal, upon which must be engraved the name of the district and the words "Notary Public," with the surname of the notary and at least the initials of his Christian name.

Sec. 19. **Protests.** The protest of a notary public under his hand and seal of a bill of exchange or promissory note for nonacceptance or nonpayment, stating the presentment for acceptance or payment and the nonacceptance or nonpayment thereof, the service of notice on any and all parties to such bill of exchange or promissory note and specifying the mode of giving such notice and the reputed place of residence of the party to such bill of exchange or promissory note and of the party to whom same was given and the post office nearest thereto is prima facie evidence of the facts contained therein.

Sec. 20. **Disposition of records.** It shall be the duty of every notary public, on his resignation or removal from office or at the expiration of his term, and in case of his death of his legal representative, to forthwith deposit all the records kept by him in the office of the clerk of the division of the district court in which he resides, and on failure to do so the person so offending is liable in damages to any person injured thereby.

Sec. 21. **Copies of records.** It shall be the duty of each clerk aforesaid to receive and safely keep all records and papers of the notary in each case above named and to give attested copies of them under his seal, for which he may demand such fees as by law may be allowed to the notaries, and such copies shall have the same effect as if certified by the notary.

Sec. 22. **Bond of notaries.** Each notary must execute an official bond in the sum of one thousand dollars, which bond must be approved by the clerk of the division of the district court located nearest his residence.

Sec. 23. **To transmit oath and bond.** Each notary public, upon approval of his official bond, so soon as he has taken his official oath, must transmit such bond and oath, signed by him with his own proper signature to the office of the secretary of the district, whereupon the governor must issue a commission.

Sec. 24. **Official misconduct.** For the official misconduct or neglect of a notary public, he and sureties on his official bond are liable to the parties injured thereby for all damages sustained.

Sec. 25. **Present incumbents to complete their terms.** The officers properly qualified and actually discharging official duties in the district at the time of the approval of this Act may continue to act in their respective official capacities until the expiration of the terms for which they were respectively appointed unless sooner removed.

Sec. 26. **Laws relating to mining claims.** The laws of the United States relating to mining claims, mineral locations, and rights incident thereto are hereby extended to the district of Alaska: Provided, That subject only to

such general limitations as may be necessary to exempt navigation from artificial obstructions all land and shoal water between low and mean high tide on the shores, bays, and inlets of Bering Sea, within the jurisdiction of the United States, shall be subject to exploration and mining for gold and other precious metals by citizens of the United States, or persons who have legally declared their intentions to become such, under such reasonable rules and regulations as the miners in organized mining districts may have heretofore made or may hereafter make governing the temporary possession thereof for exploration and mining purposes until otherwise provided by law: Provided further, That the rules and regulations established by the miners shall not be in conflict with the mining laws of the United States; and no exclusive permit shall be granted by the Secretary of War authorizing any person or persons, corporation or company to excavate or mine under any of said waters below low tide, and if such exclusive permit has been granted it is hereby revoked and declared null and void; but citizens of the United States or persons who have legally declared their intention to become such shall have the right to dredge and mine for gold or other precious metals in said waters, below low tide, subject to such general rules and regulations as the Secretary of War may prescribe for the preservation of order and the protection of the interests of commerce; such rules and regulations shall not, however, deprive miners on the beach of the right hereby given to dump tailings into or pump from the sea opposite their claims, except where such dumping would actually obstruct navigation, and the reservation of a roadway sixty feet wide, under the tenth section of the Act of May fourteenth, eighteen hundred and ninety-eight, entitled "An Act extending the homestead laws and providing for right of way for railroads in the District of Alaska, and for other purposes," shall not apply to mineral lands or town sites.

Sec. 27. **Schools and missions not to be disturbed in possession of lands.** The Indians or persons conducting schools or missions in the district shall not be disturbed in the possession of any lands now actually in their use or occupation, and the land, at any station not exceeding six hundred and forty acres, now occupied as missionary stations among the Indian tribes in the section, with the improvements thereon erected by or for such societies, shall be continued in the occupancy of the several religious societies to which the missionary stations respectively belong, and the Secretary of the Interior is hereby directed to have such lands surveyed in compact form as nearly as practicable and patents issued for the same to the several societies to which they belong; but nothing contained in this Act shall be construed to put in force in the district the general land laws of the United States.

Sec. 28. **Education.** The Secretary of the Interior shall make needful and proper provision and regulations for the education of the children of school age in the district of Alaska, without reference to race and their compulsory attendance at school, until such time as permanent provision shall be made for the same.

Sec. 29. **Use of troops allowed; licenses, etc.** An Act entitled "An Act to define and punish crimes in the district of Alaska, and to provide a code of criminal procedure for the district," approved March third, eighteen hundred and ninety-nine, be, and is, amended, by adding to section three hundred and sixty-three thereof the following: "Provided, Section fifteen of an Act entitled 'An Act making appropriations for the support of the Army for the fiscal year ending June thirtieth, eighteen hundred and seventy-nine, and for other purposes,' approved June eighteenth, eighteen hundred and seventy-eight, shall not be construed to apply to the district of Alaska"; Provided further, That

section four hundred and sixty, chapter forty-four, title two, of said first-mentioned act, be amended to read as follows:

"Sec. 460. That any person or persons, corporation, or company prosecuting or attempting to prosecute any of the following lines of business within the district of Alaska shall first apply for and obtain license so to do from a district court or a subdivision thereof in said district, and pay for said license for the respective lines of business and trade as follows, to wit:

"Abstract offices, fifty dollars per annum.

"Banks, two hundred and fifty dollars per annum.

"Boarding houses having accommodations for ten or more guests, fifteen dollars per annum.

"Brokers (money, bill, note, and stock), one hundred dollars per annum.

"Billiard rooms, fifteen dollars per table per annum.

"Bowling alleys, fifteen dollars per annum.

"Breweries, five hundred dollars per annum.

"Bottling works, two hundred dollars per annum.

"Cigar manufacturers, twenty-five dollars per annum.

"Cigar stores or stands, fifteen dollars per annum.

"Drug stores, fifty dollars per annum.

"Public docks, wharves, and warehouses, ten cents per ton on freight handled or stored.

"Electric-light plants, furnishing light or power for sale, three hundred dollars per annum.

"Fisheries: Salmon canneries, four cents per case; salmon salteries, ten cents per barrel; fish-oil works, ten cents per barrel; fertilizer works, twenty cents per ton.

"Freight and passenger transportation lines, propelled by mechanical power registered in the district of Alaska, and not paying license or tax elsewhere, and river and lake steamers, as well as transportation lines doing business wholly within the district of Alaska, one dollar per ton per annum on net tonnage, custom-house measurement, of each vessel.

"Gas plants, for heat or light, for sale, three hundred dollars per annum.

"Hotels, fifty dollars per annum.

"Halls, public, ten dollars per annum.

"Insurance agents and brokers, twenty-five dollars per annum.

"Jewelers, twenty-five dollars per annum.

"Mines: Quartz mills, three dollars per stamp per year.

"Mercantile establishments: Doing a business of one hundred thousand dollars per annum, five hundred dollars per annum; doing a business of seventy-five thousand dollars per annum, three hundred and seventy-five dollars per annum; doing a business of fifty thousand dollars per annum, two hundred and fifty dollars per annum; doing a business of twenty-five thousand dollars per annum, one hundred and twenty-five dollars per annum; doing a business of ten thousand dollars per annum, fifty dollars per annum; doing a business of under ten thousand dollars per annum, twenty-five dollars per annum; doing a business of under four thousand dollars per annum, ten dollars per annum.

"Meat markets, fifteen dollars per annum.

"Manufactories not enumerated herein, same classification and license charges as mercantile establishments.

"Physicians, itinerant, fifty dollars per annum.

"Planing mills, fifty dollars per annum when not part of a sawmill.

"Pawnbrokers, three hundred dollars per annum.

"Peddlers, twenty-five dollars per annum.

"Patent-medicine venders (not regular druggists), fifty dollars per annum.

"Railroads, one hundred dollars per mile per annum on each mile operated
"Restaurants, fifteen dollars per annum.
"Real estate dealers and brokers, fifty dollars per annum.
"Ships and shipping: Ocean and coastwise vessels doing local business for hire plying in Alaskan waters, registered in Alaska or not paying license or tax elsewhere, one dollar per ton per annum on net tonnage, custom-house measurement, of each vessel.
"Sawmills, ten cents per thousand feet on the lumber sawed.
"Steam ferries, one hundred dollars per year.
"Toll road or trail, two hundred dollars per annum.
"Tobacconists, fifteen dollars per annum.
"Tramways, ten dollars for each mile or fraction thereof per annum.
"Transfer companies, fifty dollars per annum.
"Taxidermists, ten dollars per annum.
"Theaters, one hundred dollars per annum.
"Waterworks, furnishing water for sale, fifty dollars per annum."

That section four hundred and sixty-three of chapter forty-four, title two, of the above-named Act be, and the same is hereby, amended so as to read as follows:

"Sec. 463. That the licenses provided for in this Act shall be issued by the clerk of the district court or any subdivision thereof in compliance with the order of the court or judge thereof duly made and entered; and the clerk of the court shall keep a full record of all applications for license and of all recommendations for and remonstrances against the granting of licenses and of the action of the court thereon: Provided, That the clerk of said court and each division thereof shall give bond or bonds in such amount as the Secretary of the Treasury may require and in such form as the Attorney-General may approve, and all moneys received for licenses by him or them under this Act shall, except as otherwise provided by law, be covered into the Treasury of the United States, under such rules and regulations as the Secretary of the Treasury may prescribe; And provided further, That chapter twelve of title one of said first above-mentioned Act be amended by adding after section one hundred and thirty-eight another section to be numbered one hundred and thirty-nine, and to read as follows:

"That no person shall break, take from the nest, or have in possession the eggs of any crane, wild duck, brant, or goose; nor shall any person transport or ship out of said Territory the eggs or the contents of the eggs of any crane, wild duck, brant, or goose; nor shall any person, common carrier or other transportation company carry or receive for shipment such eggs or the contents of said eggs, and any person or company who shall have in possession or receive for shipment or transportation any eggs or the contents of any eggs of the crane, wild duck, brant, or goose, shall be guilty of a misdemeanor and upon conviction be punished as provided in this section. Any person or company violating the provisions of this section shall be punished by a fine not exceeding five hundred dollars or imprisonment not exceeding six months."

Sec. 30. **Schedules of fees, etc.** In case the law requires or authorizes any services to be performed or any act to be done by any official or person within the District of Alaska, and provides no compensation therefor, the Attorney-General may prescribe and promulgate a schedule of such fees, mileage, or other compensation as shall be by him deemed proper for each division of the court, and such schedule shall have the force and effect of law; and the Attorney-General may from time to time amend such schedule and promulgate the same as amended, and the schedule as amended and promulgated shall also have the force and effect of law.

Sec. 31. Court rooms, offices and jails. Any of the public buildings in the district not required for the customs service or military purposes may be used for court rooms and offices of the civil government; and the marshals of the district shall, each in his division, be the custodian of such buildings. Any division of the court may, where necessary, order the construction or repair of a jail building at the place or places where terms of the court are held, at a cost not to exceed three thousand dollars for each building, the same to be paid by the clerk as provided for the payment of other allowances for the necessary expenses of the court; and any part or portion of the unappropriated public domain of the United States, embracing not more than four thousand square feet, to be taken in compact form, as near as may be practicable, may be set aside by order of the court as a jail site, which order shall describe the location of the ground selected, where unsurveyed by metes and bounds and by reference to natural objects and permanent monuments, in such manner that its boundaries and its location may be readily determined, a certified copy of which order of the court shall be by the clerk thereof transmitted to the Commissioner of the General Land Office, who shall cause the same to be noted on the records of his office, and thereafter the ground described shall be reserved from sale or other disposition unless for good cause the court shall vacate the order of reservation or Congress shall otherwise direct, and the sentence of imprisonment in any criminal case shall be carried out by confinement in the penitentiary or jails herein provided for, or as provided in section fifty-five hundred and forty-six of the Revised Statutes of the United States.

Where a suitable court room is not available or can not be obtained at reasonable rental at the place or any of the places where terms of the court are held, the court may enter a like order of reservation and direct the construction of a suitable building where the sessions of the court may be held, the cost of such building not to exceed in any case the sum of five thousand dollars, the same to be paid and proceedings to reserve the land to be as in the case of the reservation of ground and construction of jail, as hereinbefore provided: Provided, No court building or jail shall be constructed in any division of the district without authority from the Attorney-General, to whom the clerk shall furnish a verified account in detail of all expenditures made by him for buildings, repairs, or other purposes, together with his authority for each payment made.

Sec. 32. Historical library and museum. For each certificate issued to a member of the bar, authorizing him to practice law in the district, a fee of ten dollars shall be paid to the clerk of the court, which shall be by him promptly remitted to the secretary of the district, and at the same time the clerk shall advise the governor of such remittance. For each commission issued to a notary public a fee of ten dollars shall be paid to the secretary of the district. The fees received by the secretary under this section and under chapter seventy-four of title two shall be by him retained and kept in a fund to be known as the district historical library fund. The fund thus collected shall be disbursed on the order of the governor for the purpose of establishing and maintaining the district historical library and museum. The same shall embrace copies of all laws relating to the district, and all papers and periodicals published within the district, and such other matter of historical interest as the governor may consider valuable and appropriate for such collection. The collection shall also embrace such curios relating to the aborigines and the settlers as may be by the governor deemed of historical importance. The collection thus made shall be described by the governor in the annual report of the governor to the Secretary of the Interior, and shall be

by him kept in a secure place and turned over to his successor in office. The secretary of the district and the governor shall each annually account to the Secretary of the Interior for all receipts and disbursements in connection with such historical library and museum.

Sec. 33. **Depository of publications.** The historical library and museum provided for in section thirty-two of this title is hereby made a designated depository of publications of the Government, and shall be supplied with one copy of each of said publications in the same manner as such publications are supplied to other depositories.

PART FOUR.

THE CODE OF CIVIL PROCEDURE.

TITLE II.

CHAPTER ONE.

OF THE FORMS OF ACTION.

Sec.
1. Only one form of action.
2. Parties thereto, how designated.

Sec. 1. **Only one form of action.** The distinction between actions at law and suits in equity, and the forms of all such actions and suits, are abolished, and there shall be but one form of action for the enforcement or protection of private rights and the redress or prevention of private wrongs, which is denominated a civil action.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1; Beacannon v. Leibe, 11 Oreg., 443; Burrage v. Bonanza G. & Q. M. Co., 12 ibid., 169; Aiken v. Aiken, ibid., 203.

Sec. 2. **Parties known as plaintiff and defendant.** In such actions the party complaining shall be known as the plaintiff and the adverse party as the defendant.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 2.

CHAPTER TWO.

OF THE TIME OF COMMENCEMENT OF CIVIL ACTIONS.

Sec.
3. Time of commencing actions in general.
4. Within ten years.
5. Within ten years.
6. Within six years.
7. Within three years.
8. Within two years.
9. Within one year.
10. Actions for penalty.
11. Actions not before provided for.
12. When cause of action accrues upon current account.
13. Limitations in actions by public corporations.
14. When action deemed commenced.
15. Exceptions when defendant out of the district.
16. Exceptions in favor of persons under legal disability.
17. Provisions when person entitled dies before time expires.
18. In actions by aliens time of war to be deducted.
19. Time of stay by injunction or statutory prohibition to be deducted.
20. Disability must exist when right of action accrued.
21. When several disabilities limitation does not attach until all removed.
22. Acknowledgment or new promise must be in writing
23. Limitation to commence from time of last payment.
24. No action barred by statute when cause accrued can be maintained.

Sec. 3. **Time of commencing actions.** Civil actions shall only be commenced within the periods prescribed in this title after the cause of action shall have

accrued, except when, in special cases, a different limitation is prescribed by statute. But the objection that the action was not commenced within the time limited shall only be taken by answer, except as otherwise provided in section fifty-eight.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 3; Meyer v. Beal, 5 Oreg., 130; Goodwin v. Morris, 9 id., 322; Str. Senorita v. Simonds, 1 id., 274; Baldro v. Tolmie, id., 177; Anderson v. Baxter, 4 id., 105; Pittman v. Bemiss, 5 id., 17.

Sec. 4. **Within ten years.** The periods prescribed in section three of this act for the commencement of actions shall be as follows:

Within ten years actions for the recovery of real property, or for the recovery of the possession thereof; and no action shall be maintained for such recovery unless it shall appear that the plaintiff, his ancestor, predecessor, or grantor was seized or possessed of the premises in question within ten years before the commencement of the action: Provided, In all cases where a cause of action has already accrued, and the period prescribed in this section within which an action may be brought has expired or will expire within one year from the approval of this act, an action may be brought on such cause of action within one year from the date of the approval of the act.

Laws Oreg., Oct. 17, 1878; Hill's Ann. Laws, s. 4; Shuffleton v. Nelson, 2 Saw., 540; Stark v. Star, 1 id., 23; Adams v. Burke, 3 id., 415; Joey v. Stump, 14 Oreg., 361; Wilson v. McEwan, 7 id., 87; Zellin v. Rogers, 10 Saw., 200; Swift v. Mulke, 14 Oreg., 59; Smith v. Shattuck, 12 id., 362; Stubblefield v. Menzies, 8 Saw., 41; Parker v. Metzger, 12 Oreg., 407; see ss. 17, 361, post.

Sec. 5. **Within ten years.** Within ten years—

First. An action upon a judgment or decree of any court of the United States, or of any State or Territory within the United States;

Second. An action upon a sealed instrument.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 5; Murch v. Moore, 2 Oreg., 189; Strong v. Barnhart, 5 id., 496; Meyer v. Beal, id., 130; see s. 282, post.

Sec. 6. **Within six years.** Within six years—

First. An action upon a contract or liability, express or implied, excepting those mentioned in section five;

Second. An action upon a liability created by statute, other than a penalty or forfeiture;

Third. An action for waste or trespass upon real property;

Fourth. An action for taking, detaining, or injuring personal property, including an action for the specific recovery thereof.

Laws Oreg., Oct. 20, 1870; Hill's Ann. Laws, s. 6; Howe v. Taylor, 6 Oreg., 284; Sheppard v. Yocum, 10 id., 403; Kelsey v. Griswold, 6 id., 436.

Sec. 7. **Within three years.** Within three years—

First. An action against a marshal, coroner, or constable, upon a liability incurred by the doing of an act in his official capacity or in virtue of his office; or by the omission of an official duty, including the nonpayment of money collected upon an execution. But this section shall not apply to an action for an escape;

Second. An action upon a statute for penalty or forfeiture, where the action is given to the party aggrieved, or to such party and the United States, except where the statute imposing it prescribes a different limitation.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 7; Howe v. Taylor, 6 Oreg., 293.

Sec. 8. **Within two years.** Within two years—

First. An action for libel, slander, assault, battery, seduction, false imprisonment or for any injury to the person or rights of another not arising on contract, and not herein especially enumerated:

Second. An action upon a statute for a forfeiture or penalty to the United States.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 8.

Sec. 9. **Within one year.** Within one year—

An action against the marshal or other officer for the escape of a person arrested or imprisoned on civil process.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 9.

Sec. 10. **Actions for penalties.** An action upon the statute for the penalty given in whole or in part to the person who will prosecute for the same shall be commenced within one year after the commission of the offense; and if the action be not commenced within one year by a private party, it may be commenced within two years thereafter, in behalf of the United States, by the district attorney.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 10.

Sec. 11. **Other actions.** An action for any cause not hereinbefore provided for shall be commenced within ten years after the cause of action shall have accrued.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 11.

Sec. 12. **When cause of action accrues upon accounts.** In an action brought to recover a balance due upon a mutual, open, and current account, where there have been reciprocal demands between the parties, the cause of action shall be deemed to have accrued from the date of the last item proved in the account on either side; but whenever a period of more than one year shall elapse between any of a series of items or demands, they are not to be deemed such an account.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 12.

Sec. 13. **Limitations in actions by public corporations.** The limitations prescribed in this chapter shall apply to actions brought in the name of any public corporation in the district, or for its benefit, in the same manner as to actions by private parties.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 13.

Sec. 14. **Action, when commenced.** An action shall be deemed commenced when the complaint is filed and the summons issued.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 14.

Sec. 15. **Absence or concealment of defendant.** If, when the cause of action shall accrue against any person who shall be out of the district or concealed therein, such action may be commenced within the terms herein respectively limited, after the return of such person into the district or the time of his concealment; and if, after such cause of action shall have accrued, such person shall depart from and reside out of this district, or conceal himself, the time of his absence or concealment shall not be deemed or taken as any part of the time limited for the commencement of such action.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 16; McCormick v. Blanchard, 7 Oreg., 232; Anderson v. Baxter, 4 Oreg., 105.

Sec. 16. **Persons under disabilities.** If any person entitled to bring an action mentioned in this chapter, or to recover real property, or for a penalty or forfeiture, or against a marshal or other officer for an escape, be at the time the cause of action accrued, either—

First. Within the age of twenty-one years; or

Second. Insane; or

Third. Imprisoned on a criminal charge, or in execution under sentence of a court for a term less than his natural life.

The time of such disability shall not be a part of the time limited for the commencement of the action, but the period within which the action shall be brought shall not be extended in any case longer than two years after such disability ceases.

Laws Oreg., Oct. 17, 1878; Hill's Ann. Laws, s. 17; see ss. 21, 22, post; Stubblefield v. Menzies, 8 Saw., 41.

Sec. 17. **Actions by and against personal representatives.** If a person entitled to bring an action die before the expiration of the time limited for the commencement thereof, and the cause of action survive, an action may be commenced by his personal representatives, after the expiration of the time and within one year from his death. If a person against whom an action may be brought die before the expiration of the time limited for the commencement thereof, and the cause of action survives, an action may be commenced against his personal representatives after the expiration of that time, and within six months after the issuing of letters testamentary or of administration.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 18; see ss. 353, etc., post.

Sec. 18. **Actions of aliens in time of war.** When a person shall be an alien subject or citizen of a country at war with the United States, the time of the continuance of the war shall not be a part of the period limited for the commencement of the action.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 19; Chappelle v. Olney, 1 Saw., 401.

Sec. 19. **Stay by injunction or statutory prohibition.** When the commencement of an action is stayed by injunction or a statutory prohibition, the time of the continuance of the injunction or prohibition shall not be a part of the time limited for the commencement of the action.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 20.

Sec. 20. **Disability must exist when action accrues.** No person shall avail himself of a disability unless it existed when his right of action accrued.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 22.

Sec. 21. **Several disabilities.** When two or more disabilities shall coexist at the time the right of action accrues, the limitation shall not attach until all such disabilities are removed.

Laws Oreg., Oct. 11, 1886; Hill's Ann. Laws, s. 23.

Sec. 22. **Acknowledgment or new promise.** No acknowledgment or promise shall be sufficient evidence of a new or continuing contract, whereby to take the case out of the operation of this chapter, unless the same is contained in some writing, signed by the party to be charged thereby; but this section shall not alter the effect of any payment of principal or interest.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 24; Greene v. Coos Bay Co., 10 Saw., 625; Anderson v. Baxter, 4 Oreg., 105; Partlow v. Singer, 2 id., 307; Sutherlin v. Roberts, 4 id., 378; Torrance v. Strong, 4 id., 39; see s. 23.

Sec. 23. **Effect of part payment.** Whenever any payment of principal or interest has been or shall be made upon an existing contract, whether it be a bill of exchange, promissory note, bond, or other evidence of indebtedness, if such payment be made after the same shall have become due, the limitation shall commence from the time the last payment was made.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 25; Curtain v. Vincent, 10 Oreg., 560; see note 2, s. 22.

Sec. 24. Nonresidents; cause of action when barred. When the cause of action has arisen in any State, Territory, or country between nonresidents of this district, and by the laws of the State, Territory, or country where the cause of action arose, an action can not be maintained thereon by reason of the lapse of time, no action shall be maintained thereon in this district.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 26; McCormick v. Blanchard, 7 Oreg., 222; Crawford v. Roberts, 8 id., 324; Sherman v. Osborne, id., 66.

CHAPTER THREE.

OF THE PARTIES TO ACTIONS.

Sec.
25. Action to be prosecuted in the name of the real party in interest.
26. Assignment of a thing in action not to prejudice defense.
27. Executor or trustee may sue without the person beneficially interested.
28. Married women may prosecute and defend as if unmarried.
29. Infant to appear by guardian.
30. Guardian, how appointed.
31. Who may prosecute for injury or death of a child.
32. Who may prosecute for seduction of a daughter or ward.
Sec.
33. When unmarried female may sue for her own seduction.
34. Parties severally liable on same instrument may be sued together or separately.
35. When action not to abate.
36. When action for wrong not to abate.
37. When third persons may be substituted as defendants.
38. Who may be made parties to action.
39. Who must be made parties to action.
40. When court to decide controversy or order other parties brought in.
41. Who may intervene.

Sec. 25. Action to be prosecuted in name of real party in interest. Every action shall be prosecuted in the name of the real party in interest, except as otherwise provided in section twenty-seven; but this section shall not be deemed to authorize the assignment of a thing in action not arising out of contract.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 27; Elliott v. Teal, 5 Saw., 190.

Sec. 26. Assignment of chose in action not to prejudice defense or set-off. In the case of an assignment of a thing in action, the action by the assignee shall be without prejudice to any set-off or other defense existing at the time of or before notice of the assignment; but this section shall not apply to a negotiable promissory note or bill of exchange transferred in good faith and upon valuable consideration before due.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 28; see s. 77, post.

Sec. 27. Executor or administrator or trustee may sue. An executor or administrator, a trustee of an express trust, or a person expressly authorized by statute, may sue without joining with him the person for whose benefit the action is prosecuted. A person with whom, or in whose name a contract is made for the benefit of another, is a trustee of an express trust within the meaning of this section.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 29; see s. 444, post; Holladay v. Davis, 5 Oreg., 40; Trustees v. Adams, 4 id., 78.

Sec. 28. When married woman may prosecute and defend. A wife may receive the wages of her personal labor, and maintain an action therefor in her own name and hold the same in her own right, and she may prosecute and

defend all actions for the preservation and protection of her rights and property as if unmarried.

Laws Oreg., Oct. 21, 1878; Hill's Ann. Laws, s. 31.

Sec. 29. **Infant to appear by guardian.** Actions may be commenced and prosecuted by infants, either by guardian or next friend, and by conservators on behalf of the persons they represent.

Sec. 30. **Appointment of guardian ad litem.** In any action it shall be lawful for the court in which the action is pending to appoint a guardian ad litem to any infant or insane defendant in such action, and to compel the person so appointed to act. By such appointment such person shall not be rendered liable to pay costs of action; and he shall, moreover, be allowed a reasonable sum for his charges as such guardian, to be fixed by the court, and taxed in the bill of costs.

Sec. 31. **Who may prosecute for injury or death of a child.** A father, or in case of his death or desertion of his family, the mother, may maintain an action as plaintiff for the injury or death of a child, and a guardian for the injury or death of his ward.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 34; David v. Waters, 11 Oreg., 448; see s. 353, post.

Sec. 32. **Who may prosecute for seduction of daughter or ward.** A father, or in case of his death or desertion of his family, the mother, may maintain an action as plaintiff for the seduction of a daughter, and the guardian for the seduction of a ward, though the daughter or ward be not living with or in the service of the plaintiff at the time of the seduction or afterwards, and there be no loss of service.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 35.

Sec. 33. **When unmarried female may sue for seduction.** An unmarried female over twenty-one years of age may maintain an action as plaintiff for her own seduction, and recover therein such damages as may be assessed in her favor; but the prosecution of an action to judgment by the father, mother, or guardian, as prescribed in the section last preceding, shall be a bar to an action by such unmarried female.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 36; Bren v. Henkle, 14 Oreg., 495.

Sec. 34. **Persons severally liable on same instrument.** Persons severally liable upon the same obligation or instrument, including the parties to bills of exchange and promissory notes, may all or any of them be included in the same action, at the option of the plaintiff.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 37; Kamm v. Harker, 3 Oreg., 210; Tyler v. T. of T. A. P. U., 14 id., 485.

Sec. 35. **When action not to abate.** No action shall abate by the death or disability of a party, or by the transfer of any interest therein, if the cause of action survive or continue. In case of the death or disability of a party, the court may at any time within two years thereafter, on motion, allow the action to be continued by or against his personal representatives or successor in interest.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 38; Elliot v. Teal, 5 Saw., 188; Barker v. Ladd, 3 id., 44; Wilson v. Cadman, 3 Cranch, 193; Dick v. Kandall, 6 Oreg., 166.

Sec. 36. **When action for wrong does not abate.** An action for a wrong shall not abate by the death of any party after the verdict has been given therein,

but the action shall proceed thereafter in the same manner as in cases where the cause of action survives.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 39.

Sec. 37. **Interpleader.** In any action for the recovery of specific personal property, if a third person demand of the defendant the same property, the court, in its discretion, on motion of the defendant, and notice to such person and the adverse party, may, before answer, make an order discharging the defendant from liability to either party, and substitute such person in his place as defendant. Such order shall not be made but on the condition that the defendant deliver the property or its value to such person as the court may direct, nor unless it appears from the affidavit of the defendant, filed with the clerk by the day he is otherwise required to answer, that such person makes such demand without collusion with the defendant. The affidavit of such third person as to whether he makes such demand of the defendant may be read on the hearing of the motion.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 40.

Sec. 38. **Who may be made parties to action.** All persons having an interest in the subject of the action, and in obtaining the relief demanded, may be joined as plaintiffs, except as in this chapter otherwise provided. Any person may be made a defendant who has or claims an interest in the controversy, adverse to the plaintiff, or who is a necessary party to the complete determination or settlement of the question involved therein.

Sec. 39. **Who must be made parties to action.** Of the parties to the action, those who are united in interest must be joined as plaintiffs or defendants; but if the consent of any one who should have been joined can not be obtained he may be made a defendant, the reason thereof being stated in the complaint; and when the question is one of a common or joint interest of many persons, or when the parties are numerous, and it may be impracticable to bring them all into court, one or more may sue or defend for the benefit of the whole.

Sec. 40. **Bringing in new parties.** The court may determine any controversy between parties before it when it can be done without prejudice to the rights of others, or by saving their rights; but when a complete determination of the controversy can not be had without the presence of other parties, the court shall cause them to be brought in.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 41; Tichenor v. Coggins, 8 Oreg., 270; Wetmore v. Wetmore, 5 id., 469.

Sec. 41. **Who may intervene.** Any person may, before the trial, intervene in an action or proceeding, who has an interest in the matter of litigation, in the success of either of the parties, or an interest against both. An intervention takes place when a third person is permitted to become a party to an action or proceeding, either by joining the plaintiff in claiming what is sought by the complaint, or by uniting with the defendant in resisting the claims of the plaintiff, or by demanding anything adversely to both the plaintiff and the defendant, and is made by complaint setting forth the ground upon which the intervention rests, filed by leave of the court and served upon the parties to the action or proceeding who have not appeared, and upon the attorneys of the parties who have appeared, who may answer or demur to it as if it were an original complaint.

CHAPTER FOUR.

OF THE MANNER OF THEIR COMMENCEMENT.

Sec.
42. How actions commenced.
43. Requisites of summons.
44. Summons to contain notice of what plaintiff demands.
45. By whom served and when and where returned.
46. How served and upon whom.
47. When order for publication may be made.
48. Publication, how made; personal service out of the district.
49. When defendant may be allowed to defend after judgment.
50. When the summons is returned not found, how plaintiff may proceed.
51. When the summons not served on all the defendants.
52. Proof of service of summons.
53. When court acquires jurisdiction.

Sec. 42. **Actions, how commenced.** Civil actions shall be commenced by filing a complaint with the clerk of the court, and the provisions of section fourteen shall only apply to this subject for the purpose of determining whether an action has been commenced within the time limited by this title. At any time after the action is commenced the plaintiff may cause a summons to be served on the defendant.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 51; Coggan v. Reeves, 3 Oreg., 275.

Sec. 43. **Requisites of summons.** The summons shall contain the name of the court in which the complaint is filed, the names of the parties to the action, and the title thereof. It shall be issued by the court or the clerk thereof and directed to the defendant, and shall require him to appear and answer the complaint as in this section provided, or judgment for want thereof will be taken against him. The defendant shall appear and answer the complaint within thirty days from the date of the service.

Laws Oreg., Oct. 20, 1864; Hill's Ann. Laws, s. 52; Smith v. Ellendale Mfg. Co., 4 Oreg., 70; Trullenger v. Tood, 5 id., 36; Bailey v. Williams, 6 Oreg., 71; Hunsaker v. Coffin, 2 Oreg., 107.

Sec. 44. **Summons to contain notice of demand.** There shall also be inserted in the summons a notice in substance as follows:

First. In any action for the recovery of money or damages only that the plaintiff will take judgment for a sum specified therein if the defendant fail to answer the complaint.

Second. In other actions, that if the defendant fail to answer the complaint the plaintiff will apply to the court for the relief demanded therein.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 53.

Sec. 45. **Summons, who to serve, and when returnable.** The summons shall be served by the marshal or any deputy, or by a person specially appointed by him or by the court or judge thereof. The summons shall be returned to the court or clerk thereof with whom the complaint is filed within forty days after its delivery to the officer or other person for service, with proof of such service or that the defendant can not be found. The marshal or other person to whom the summons is delivered shall endorse thereon the date of such delivery.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 54; Heatherly v. Hadley, 4 Oreg., 1.

Sec. 46. **Summons, how and upon whom served.** The summons shall be served by delivering a copy thereof, together with a copy of the complaint

prepared and certified by the plaintiff, his agent, or attorney, or by the clerk of the court, as follows:

First. If the action be against a private corporation, to the president or other head of the corporation, secretary, cashier, or managing agent, or, in case none of the officers of the corporation above named shall reside or have an office in the district, then to any clerk or agent of such corporation who may reside or be found in the district, or if no such officer be found, then by leaving a copy thereof at the residence or usual place of abode of such clerk or agent.

Second. If against any incorporated town, school district, or other public corporation in the district, to the clerk of such incorporated town, school district, or other public corporation;

Third. If against a minor under the age of fourteen years, to such minor personally, and also to his father, mother, or guardian, or if there be none within the district, then to any person having the care or control of such minor, or with whom he resides, or in whose service he is employed;

Fourth. If against a person judicially declared to be of unsound mind, or incapable of conducting his own affairs, and if a guardian has been appointed, to such guardian and to the defendant personally;

Fifth. In all cases, to the defendant personally, or if he be not found, to some person of the family above the age of fourteen years at the dwelling house or usual place of abode of the defendant.

Laws Oreg., Oct. 20, 1876; Hill's Ann. Laws, s. 55; Heatherly v. Hadley, 2 Oreg., 276; Penoyer v. Neff, 95 U. S. 727; Willamette F. Co. v. Williams, 1 Oreg., 112; Lung Chung v. N. P. R. R. Co., 10 Saw., 17; Caro Bros. v. O. & C. R. R. Co., 10 Oreg., 510; Hass v. Sedlak, 9 id., 462; Carland v. Heineborg, 2 id., 75.

Sec. 47. **Service by publication and order therefor.** When service of the summons can not be made as prescribed in the last preceding section, and the defendant after due diligence can not be found within the district, and when that fact appears by affidavit to the satisfaction of the court or judge thereof, or justice of the peace in an action in a justice's court, and it also appears that a cause of action exists against the defendant, or that he is a proper party to an action relating to real or personal property in the district, the court or judge thereof, or a justice of the peace in an action in a justice's court, shall grant an order that the service be made by publication of the summons in either of the following cases:

First. When the defendant is a foreign corporation, and has property within the district, or the cause of action arose therein;

Second. When the defendant, being a resident of the district, has departed therefrom with intent to defraud his creditors or to avoid the service of the summons, or with like intent keeps himself concealed therein, or has departed from the district and remained absent therefrom six consecutive weeks;

Third. When the defendant is not a resident of the district, but has property therein, and the court has jurisdiction of the subject of the action;

Fourth. When an action is to have a marriage declared void, or for a divorce in the cases prescribed by law;

Fifth. When the subject of the action is personal property in the district, and the defendant has a claim or lien, of (or) interest, actual or contingent, therein, or the relief demanded consists wholly or partly in excluding the defendant from any interest or lien therein;

Sixth. When the action is to foreclose, satisfy, or redeem from a mortgage, or to enforce a lien of any kind on real estate in said district, or satisfy or redeem from the same. The summons published shall contain the name of the court and the title of the cause, a succinct statement of the relief demanded,

the date of the order for service by publication, and the time within which the defendant is required to answer the complaint.

Laws Oreg., Oct. 27, 1870; Hill's Ann. Laws, s. 56; Cooper v. Reynolds, 10 Wall., 319; Galpin v. Page, 18 id., 364; Northcut v. Lemery, 8 Oreg., 316; Ladd v. Ramsby, 10 id., 207; Trullenger v. Todd, 5 id., 36; Collinson v. Teal, 4 Saw., 241; O'Dell v. Campbell, 9 Oreg., 298; Gray v. Lorimore, 4 Saw., 638.

Sec. 48. **Manner of publication.** The order shall direct the publication to be made in a newspaper to be designated by the court or judge or clerk as the most likely to give notice to the person to be served, and for such length of time as may be deemed reasonable, not less than once a week for six weeks. In case of publication, the court or judge shall also direct a copy of the summons and complaint to be forthwith deposited in the post-office, directed to the defendant at his place of residence, unless it shall appear that such residence is neither known to the party making the application nor can with reasonable diligence be ascertained by him. When publication is ordered, personal service of a copy of the summons and complaint out of the district shall be equivalent to publication and deposit in the post-office. In either case, the defendant shall appear and answer within thirty days after the completion of such period of publication. In case of personal service out of the district, the summons shall specify the time prescribed in the order for publication.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 57; Odell v. Campbell, 9 Oreg., 298.

Sec. 49. **When defendant may be allowed to defend after judgment.** The defendant against whom publication is ordered, or his personal representatives, on application and sufficient cause shown, at any time before judgment shall be allowed to defend the action; and the defendant against whom publication is ordered, or his representatives, may in like manner, upon good cause shown, and upon such terms as may be proper, be allowed to defend after judgment and within one year after the entry of such judgment on such terms as may be just; and if the defense be successful, and the judgment or any part thereof have been collected or otherwise enforced, such restitution may thereupon be compelled as the court shall direct. But the title to property sold upon execution issued on such judgment to a purchaser in good faith shall not be thereby affected.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 58; Smith v. Smith, 3 Oreg., 363.

Sec. 50. **When summons returned not found.** Whenever it shall appear by the return of the marshal, his deputy, or the person appointed to serve a summons that the defendant is not found, the plaintiff may deliver another summons to be served, and so on, until service be had; or the plaintiff may proceed by publication, as in this chapter provided, at his election.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 59.

Sec. 51. **When summons not served on all defendants.** When the action is against two or more defendants, and the summons is served on one or more but not all of them, the plaintiff may proceed as follows:

First. If the action be against defendants jointly indebted upon a contract, he may proceed against the defendants served, unless the court otherwise direct; and if he recover judgment, it may be entered against all the defendants thus jointly indebted so far only as that it may be enforced against the joint property of all and the separate property of the defendant served, and if they are subject to arrest, against the persons of the defendants served; or,

Second. If the action be against the defendants severally liable, he may proceed against the defendants served in the same manner as if they were the only defendants; or,

Third. If all the defendants have been served, judgment may be taken against any or either of them severally, when the plaintiff would be entitled to judgment against such defendant or defendants, if the action had been against them, or any of them alone.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 60; Richardson v. Fuller, 2 Oreg., 179; Sears v. McGrew, 10 id., 48.

Sec. 52. **Proof of service by publication.** Proof of the service of the summons, or of the deposit thereof in the post-office, shall be as follows:

First. If the service or deposit in the post-office be by the marshal or his deputy, the certificate of such officer; or,

Second. If by any other person, his affidavit thereof; or,

Third. In case of publication, the affidavit of the printer or his foreman, or his principal clerk, showing the same; or

Fourth. The written admission of the defendant in case of service otherwise than by publication; the certificate, affidavit, or admission must state the time and place of service; and in case of deposit in the post-office, the time and place thereof.

Laws Oreg., Nov. 24, 1885; Hill's Ann. Laws, s. 61; Odell v. Campbell, 9 Oreg., 298.

Sec. 53. **When court acquires jurisdiction; appearance.** From the time of the service of the summons or the allowance of a provisional remedy the court shall be deemed to have acquired jurisdiction and to have control of all the subsequent proceedings. A voluntary appearance of the defendant shall be equivalent to personal service of the summons upon him.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 62; Woodward v. Baker, 10 Oreg., 49; Lung Chung v. N. P. R. R. Co., 10 Saw., 17; Clark v. Bernhart, 108 N. S. 436; Harker v. Fahie, 2 Oreg., 89.

CHAPTER FIVE.

OF THE PLEADINGS.

Sec.
54. Forms of pleadings, how determined.
Sec.
55. Pleadings on the part of plaintiff and defendant.

Sec. 54. **Forms of pleadings.** All the forms of pleading heretofore existing in actions at law and suits in equity and in admiralty are abolished, and hereafter the forms of pleading in courts of record and the rules by which the sufficiency of the pleadings is to be determined shall be those prescribed by this code.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 63.

Sec. 55. **Pleadings under code.** The only pleadings on the part of the plaintiff shall be—

First The complaint;

Second. The demurrer; or

Third. The reply.

And on the part of the defendant—

First. The demurrer; or

Second. The answer.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 64.

CHAPTER SIX.

OF THE COMPLAINT.

Sec.
56. First pleading to be complaint.
57. What complaint to contain.

Sec. 56. **Complaint is first pleading.** The first pleading on the part of the plaintiff shall be the complaint.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 65.

Sec. 57. **Contents of complaint.** The complaint shall contain—

First. The title of the cause, specifying the name of the court and the names of the parties to the action, plaintiff and defendant.

Second. A plain and concise statement of the facts constituting the cause of action, without unnecessary repetition.

Third. A demand of the relief which the plaintiff claims. If the recovery of money or damages be demanded the amount thereof shall be stated.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 66; Hayden v. Stedman, 3 Oreg., 550; Davis v. Wait, 12 id., 425; Heatherly v. Hadley, 2 id., 269; Ladd v. Ramsby, 10 id., 207; Smith v. Foster, 5 id., 44; Simpson v. Prather, 5 id., 86; Oh Chow v. Hallet, 2 Saw., 259; Paddock v. Hume, 6 Oreg., 82; Dick v. Wilson, 10 id., 490; Boyle v. Chase, 1 W. C. Rep. 327.

CHAPTER SEVEN.

OF THE DEMURRER.

Sec.
58. When the defendant may demur, and for what.
59. Demurrer must specify ground of objection.
60. How to proceed if complaint be amended.
61. Objection when taken by answer.
62. Objection when deemed waived.

Sec. 58. **Demurrer to the complaint.** The defendant may demur to the complaint within the time required by law to appear and answer, when it appears upon the face thereof, either

First. That the court has no jurisdiction of the person of the defendant or the subject of the action; or,

Second. That the plaintiff has no legal capacity to sue; or,

Third. That there is another action pending between the same parties for the same cause; or,

Fourth. That there is a defect of parties plaintiff or defendant; or,

Fifth. That several causes of action have been improperly united; or,

Sixth. That the complaint does not state facts sufficient to constitute a cause of action; or,

Seventh. That the action has not been commenced within the time limited by this code.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 67; Rice v. Rice, 13 Oreg., 337; Neis v. Yokum, 9 Saw., 25; Conroy v. Oreg. Const. Co., 10 id. 630; English v. Savage, 5 Oreg., 518; Cohen v. Otenheimer, 13 id., 220; Wells v. Applegate, 12 id., 208; Richard v. Fanning, 5 id., 356; Hopwood v. Patterson, 2 Oreg., 50; Staunton v. Embrey, 93 U. S., 548; Weiss v. Bethel, 8 Oreg., 527.

Sec. 59. **Demurrer must specify grounds.** The demurrer shall distinctly specify the grounds of objection to the complaint; unless it does so it may be disregarded. It may be taken to the whole complaint or to any of the alleged causes of action stated therein.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 68; Simpson v. Prather, 5 Oreg., 86; Ketchum v. State, 2 id., 103.

Sec. 60. **How to proceed if complaint amended.** If the complaint be amended, a copy thereof shall be served on the defendant or his attorney, and the defendant shall answer the same within such time as may be prescribed by the court, and if he omit to do so the plaintiff may proceed to obtain judgment as in other cases of failure to answer.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 69.

Sec. 61. **Objections, when taken by answer.** When any of the matters enumerated in section fifty-eight do not appear upon the face of the complaint the objection may be taken by answer.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 70.

Sec. 62. **Objections, when deemed waived.** If no objection be taken, either by demurrer or answer, the defendant shall be deemed to have waived the same, excepting only the objection to the jurisdiction of the court and the objection that the complaint does not state facts sufficient to constitute a cause of action.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 71; Bowen v. Emerson, 3 Oreg., 452; Ewarts v. Steuger, 5 id., 147; Mack v. Salem, 6 id., 275; Olds v. Carey, 13 id., 362; King v. Boyd, 4 id., 326.

CHAPTER EIGHT.

OF THE ANSWER.

Sec.
63. What the answer shall contain.
64. Nature of counterclaim, and how stated.
65. Defendant may demur to one or more of several causes of action and answer the rest.
66. Sham and irrelevant answers stricken out on motion.

Sec. 63. **What answer shall contain.** The answer of the defendant shall contain—

First. A general or specific denial of each material allegation of the complaint controverted by the defendant, or of any knowledge or information thereof sufficient to form a belief.

Second. A statement of any new matter constituting a defense or counterclaim in ordinary and concise language without repetition.

Laws. Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 72; Moser v. Jenkins, 5 Oreg., 447; Scoville v. Barney, 4 id., 228; Ladd v. Ramsby, 10 id., 207; Robbins v. Baker, 2 id., 52; Wilson v. Allen, 11 id., 154; Sherman v. Osborn, 8 id., 661; Oreg. Ry. Co. v. Oreg. R. & N. Co., 10 Saw., 464; Foren v. Dealey, 4 Oreg., 92; White v. Allen, 3 id., 103; Wythe v. City, 4 Saw., 88; Rugh v. Otenheimer, 6 Oreg., 231; Str. Senorita v. Simonds, 1 Oreg., 74; Konigsberger v. Harvey, 12 id., 286; Gee v. Culver, 12 id., 228; Kahn v. Love, 2 id., 206; Webb v. Nickerson, 11 id., 382.

Sec. 64. **Counterclaim.** The counterclaim mentioned in the last preceding section must be one existing in favor of the defendant and against a plaintiff, between whom a several judgment might be had in the action, and arising out of the following causes of action:

First. A cause of action arising out of the contract or transaction set forth in the complaint as the foundation of the plaintiff's claim.

Second. In an action arising on contract, any other cause of action arising also on contract, and existing at the commencement of the action.

The defendant may set forth by answer as many defenses and counterclaims as he may have. They shall each be separately stated and refer to the causes of action which they are intended to answer in such manner that they may be intelligibly distinguished.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 73; Burrage v. Bonanza G. & S. M. Co., 12 Oreg., 169; Hopwood v. Patterson, 2 id., 50; Oreg. Cent. R. Co. v. Walt, 3 id., 428; Dowell v. Cardwell, 3 Saw., 217; Chapman v. School Dist., 1 Deady, 116; Moore v. Willamette, 7 Oreg., 355.

Sec. 65. **Demurring and answering at same time.** The defendant may demur to one or more of several causes of action stated in the complaint and answer the residue.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 74.

Sec. 66. **Sham, frivolous, and irrelevant answers stricken out.** Sham, frivolous, and irrelevant answers and defenses may be stricken out on motion, and upon such terms as the court may in its discretion impose.

Laws Oreg., Oct 11, 1862; Hill's Ann. Laws, s. 75; Torrance v. Strong, 4 Oreg., 39; Foren v. Dealey, ibid, 92; Bachman v. Everding, 1 Saw., 70; Oreg. Ry. Co. v. Oreg. S. & N. Co., 10 Saw., 464.

CHAPTER NINE.

OF THE REPLY.

Sec.
67. Reply, when made, and what to contain.
68. When plaintiff may demur to new matter in answer.
69. When defendant may move for judgment on answer.
70. When defendant may demur to reply.

Sec. 67. **Reply, when made, and what to contain.** When the answer contains new matter, constituting a defense or counterclaim, the plaintiff may reply to such new matter, denying generally or specifically each allegation controverted by him or any knowledge or information thereof sufficient to form a belief; and he may allege in ordinary and concise language, without repetition, any new matter not consistent with the complaint, constituting a defense to such new matter in the answer.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 76; Lilienthal v. Hotaling Co., 15 Oreg., 371; Mier v. Rothchild, id., 385; Agricultural Works v. Craighton, 21 id., 479.

Sec. 68. **When plaintiff may demur to new matter in answer.** The plaintiff may demur to an answer containing new matter, when it appears upon the face thereof that such new matter does not constitute a defense or counterclaim; or he may, for like cause, demur to one or more of such defenses or counterclaims and reply to the residue.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 77; Tolmie v. Otchin, 1 Oreg., 35.

Sec. 69. **Judgment on answer.** If the answer contains a statement of new matter, constituting a defense or counterclaim, and the plaintiff fail to reply or demur thereto within the time prescribed by law or rule of the court, the defendant may move the court for such judgment as he is entitled to on

the pleadings, and if the case require it, he may have a jury called to assess the damages.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 78; Bowles v. Dobble, 11 Oreg., 474.

Sec. 70. **Demurrer to new matter in reply.** The defendant may demur to any new matter contained in the reply, when it appears upon the face thereof that such matter is not a sufficient reply to the facts stated in the answer. Sham, frivolous, and irrelevant replies may be stricken out in like manner and on the same terms as like answers and defenses.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 79.

CHAPTER TEN.

OF THE GENERAL RULES OF PLEADING.

Sec.
71. Verification of pleadings.
72. When verification may be omitted.
73. When pleadings filed, motion to strike out.
74. Manner of pleading an account.
75. How pleadings construed.
76. Irrelevant and redundant matter may be stricken out.
77. Judgments, how pleaded.
78. Conditions precedent, how pleaded.
79. Private statute, how pleaded.
80. City ordinance, how pleaded.
81. Libel or slander, how pleaded.
82. What may be pleaded in answer in such cases.
83. Answer in action to recover the possession of property distrained.
84. What causes of action may be united in same complaint.
85. Material allegation not denied to be deemed true.
86. What is material allegation.

Sec. 71. **Verification of pleadings.** Every pleading shall be subscribed by the party or his attorney, and, except a demurrer, shall also be verified by the party, his agent, or attorney, to the effect that he believes it to be true. The verification must be made by the affidavit of the party, or, if there be several parties united in interest and pleading together, by one, at least, of such parties, if such parties be within the district and capable of making the affidavit; otherwise the affidavit may be made by the agent or attorney of the party. The affidavit may also be made by the agent or attorney if the action of defense be founded on a written instrument for the payment of money only, and such instrument be in the possession of the agent or attorney, or if all the material allegations of the pleading be within the personal knowledge of the agent or attorney. When the affidavit is made by the agent or attorney, it must set forth the reason of his making it. When a corporation is a party, the verification may be made by any officer thereof upon whom service of a summons might be made, and when the United States or any officer thereof in its behalf is a party, the verification may be made by any person to whom all the material allegations of the pleading are known.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 80; State v. Brown, 10 Oreg., 423; Robbins v. Benson, 11 id., 515; Blanchard v. Bennett, 1 id., 328; West v. Home Ins. Co., 9 Saw., 412; Str. Senorita v. Simonds, 1 Oreg., 274.

Sec. 72. **When verification may be omitted.** When, in the judgment of the court, an answer to an allegation in any pleading might subject the party answering to a prosecution for felony, the verification of the answer to such allegation may be omitted.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 81; St. ex rel. v. Wilton, 11 Oreg., 456.

Sec. 73. **When pleadings and motions to be filed.** The answer or demurrer to the complaint shall be filed with the clerk by the time required to answer, and the demurrer, or reply thereto, as the case may be, must in like manner be filed by the first day of the next term of the court, or within such time as the court may allow after the filing of the answer to the complaint, if the same be filed in term time. A demurrer to a reply must be filed in the manner and within the time required to file a demurrer to an answer. A motion to strike out a pleading for want of verification or subscription, or because several causes of action or defense therein are not pleaded separately, or for other cause, or a sham, frivolous, or irrelevant pleading or redundant matter therein, shall be made within the time for answering such pleading.

Laws Oreg., Oct. 20, 1864; Hill's Ann. Laws, s. 82; Moore v. Willamette T. & L. Co., 7 Oreg., 359.

Sec. 74. **Pleading account.** A party may set forth in a pleading the items of an account therein alleged, or file a copy thereof, with the pleading verified by his own oath, or that of his agent or attorney, if within the personal knowledge of such agent or attorney, to the effect that he believes it to be true. If he do neither, he shall deliver to the adverse party, within five days after a demand thereof in writing, a copy of the account, verified as in this section provided, or be precluded from giving evidence thereof. The court or judge thereof may order a further account when the one filed or delivered is defective.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 83; Robbins v. Benson, 11 Oreg., 514; Flanders v. Ish, 2 id., 320.

Sec. 75. **Pleadings must be liberally construed.** In the construction of a pleading for the purpose of determining its effect, its allegation shall be liberally construed, with a view of substantial justice between the parties.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 84.

Sec. 76. **Matter may be stricken out.** If irrelevant or redundant matter be inserted in the pleading, it may be stricken out on motion of the adverse party; and when the allegations of a pleading are so indefinite or uncertain that the precise nature of the charge or defense is not apparent, the court may require the pleading to be made definite and certain by amendment.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 85; White v. Allen, 3 Oreg., 103; Krewson v. Purdon, 11 id., 266; Osborn v. Graves, 11 id., 526.

Sec. 77. **Pleading judgment.** In pleading a judgment or other determination of a court or officer of special jurisdiction it shall not be necessary to state the facts conferring jurisdiction, but such judgment or determination may be stated to have been duly given or made. If such allegation be controverted, the party pleading shall be bound to establish on the trial the facts conferring jurisdiction.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 86.

Sec. 78. **Pleading performance of conditions precedent.** In pleading the performance of a condition precedent in a contract it shall not be necessary to state the facts showing such performance, but it may be stated generally that the party duly performed all the conditions on his part; and if such allegation be controverted, the party pleading shall be bound to establish on the trial the facts showing such performance.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 87; Griffin v. Pittman, 8 Oreg., 343.

Sec. 79. **Pleading private statute.** In pleading a private statute, or a right derived therefrom, it shall be sufficient to refer to such statute by its title

and the day of its passage, and the court shall thereupon take judicial notice thereof.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 88.

Sec. 80. **Pleading municipal ordinance.** In pleading an ordinance or enactment of any incorporated city, town, or village, or a right derived therefrom, in any action or proceeding, it shall be sufficient to refer to such ordinance or enactment by its title and the day of its approval, and the court shall thereupon take judicial notice thereof.

Laws Oreg., Feb. 16, 1885; Hill's Ann. Laws, s. 89; Pomroy v. Lappens, 9 Oreg., 363.

Sec. 81. **Pleading in libel or slander.** In an action for libel or slander it shall not be necessary to state in the complaint any extrinsic facts for the purpose of showing the application to the plaintiff of the defamatory matter out of which the cause of action arose, but it shall be sufficient to state generally that the same was published or spoken concerning the plaintiff, and if such allegation be controverted the plaintiff shall be bound to establish on trial that it was so published or spoken.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 90.

Sec. 82. **Answer in libel or slander.** In the actions mentioned in the last section the defendant may, in his answer, allege both the truth of the matter charged as defamatory and any mitigating circumstances to reduce the amount of damages; and whether he prove the justification or not he may give in evidence the mitigating circumstances.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 91.

Sec. 83. **Answer in action to recover property distrained.** In an action to recover the possession of property distrained doing damage, an answer that the defendant or person by whose command he acted was lawfully possessed of the real property upon which the distress was made, and that the property distrained was at the time doing damage thereon shall be good without setting forth the title to such real property.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 92.

Sec. 84. **Joinder of causes of action.** The plaintiff may unite several causes of action in the same complaint when they all arise out of—

First. Contract, express or implied; or

Second. Injuries, with or without force, to the person; or

Third. Injuries, with or without force, to property; or

Fourth. Injuries to character; or

Fifth. Claims to recover real property, with or without damages for the withholding thereof; or

Sixth. Claims to recover personal property, with or without damages for the withholding thereof; or

Seventh. Claims against a trustee by virtue of a contract or by operation of law.

But the causes of action so united must all belong to one only of these classes, and must affect all the parties to the action and not require different places of trial, and must be separately stated.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 93.

Sec. 85. **Material allegations not denied deemed true.** Every material allegation of the complaint not controverted by the answer and every material allegation of new matter in the answer not controverted by the reply, shall, for the purpose of the action, be taken as true; but the allegation of new

matter in a reply is to be deemed controverted by the adverse party as upon a direct denial or the avoidance, as the case may require.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 94.

Sec. 86. **What are material allegations.** A material allegation in a pleading is one essential to the claim or defense, and which could not be stricken from the pleading without leaving it insufficient as to such claim or defense.

Laws Oreg., Oct. 22, 1870; Hill's Ann. Laws, s. 95.

CHAPTER ELEVEN.

OF MISTAKES IN PLEADINGS AND AMENDMENTS.

Sec.
87. When variance deemed material.
88. When variance not material.
89. What deemed a failure of proof.
90. What pleading may be amended of course.
91. Amendments and pleading over after demurrer.
92. Amendments allowed by court before trial or submission.
93. Court may enlarge time to plead, or relieve party from judgment.
94. When defendant may be sued by fictitious name.
95. Amended pleadings before trial to be new pleadings.
96. Pleading not verified, or containing several causes of action or defense not separately stated, may be stricken out.
97. No error to be regarded unless it affect substantial rights.
98. Supplemental pleadings.

Sec. 87. **Variance.** No variance between the allegation in a pleading and the proof shall be deemed material, unless it shall have actually misled the adverse party to his prejudice in maintaining his action or defense upon the merits. Whenever it shall be alleged that a party has been so misled, that fact shall be proved to the satisfaction of the court, and in what respect he has been misled; and thereupon the court may order the pleading to be amended upon such terms as shall be just.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 96; Hill v. Mallan, 3 Oreg., 542; Davidson v. Oreg. & Cal. R. R., 1 W. C. Rep., 421; Brown v. Moore, 3 Oreg., 438; Dodd v. Denny, 6 id., 156; Stokes v. Brown, 20 id., 532.

Sec. 88. **Amendment on immaterial variance.** When the variance is not material, as provided in the last section, the court may direct the fact to be found according to the evidence, or may order an immediate amendment, without costs.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 97; Stokes v. Brown, 20 Oreg., 532; Ballenger v. Thompson, 26 id., 347.

Sec. 89. **What deemed a failure of proof.** When, however, the allegation of the cause of action or defense to which the proof is directed is unproved, not in some particular or particulars only, but in its entire scope and meaning, it shall not be deemed a case of variance within the last two sections, but a failure of proof.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 98; Stokes v. Brown, 20 Oreg., 532; Ahern v. Oreg. Telephone Co., 24 id., 276.

Sec. 90. **Amendments as of course.** Any pleading may be once amended by the party of course, without costs and without prejudice to the proceedings already had, at any time before the period for answering it shall expire; in

such case a copy of the amended pleading shall be served on the adverse party before the expiration of said period.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 99; Goodale v. Coffee, 24 id., 356.

Sec. 91. **Amendment or pleading over after demurrer.** After the decision upon a demurrer if it be overruled, and it appears that such demurrer was interposed in good faith, the court may, in its discretion, allow the party to plead over upon such terms as may be proper. If the demurrer be sustained the court may, in its discretion, allow the party to amend the pleading demurred to upon such terms as may be proper.

Laws Oreg., Oct. 11, 1862; Hill's Ann Laws, s. 100; Powell v. D. S. & G. R. R., 14 Oreg., 22.

Sec. 92. **Amendments in furtherance of justice.** The court may, at any time before trial, in furtherance of justice, and upon such terms as may be proper, allow any pleading or proceeding to be amended by adding the name of a party, or other allegation material to the cause, and in like manner and for like reasons, it may, at any time before the cause is submitted, allow such pleading or proceeding to be amended, by striking out the name of any party, or by correcting a mistake in the name of a party, or a mistake in any other respect, or when the amendment does not substantially change the cause of action or defense by conforming the pleading or proceeding to the facts proved.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 101; Henderson v. Morris, 5 Oreg., 24; Hexter v. Schneider, 14 id., 184; Bowles v. Doble, 11 id., 475; Brauns v. Stearns, 1 id., 367; Branson v. Oregonian Ry. Co., 11 id., 161; Foste v. Standard Ins. Co., 26 id., 449; Clemons v. Hadley, 27 id., 326; Hume v. Kelly, 28 id., 398; Leggett v. Ladd, 23 id., 26; Garrison v. Goodale, 24 id., 307.

Sec. 93. **Enlarging time to plead, etc., vacating judgments.** The court may likewise, in its discretion and upon such terms as may be just, allow an answer or reply to be made or other act to be done after the time limited by this code, or by an order enlarge such time; and may also, in its discretion, and upon such terms as may be just, at any time within one year after notice thereof, relieve a party from a judgment, order, or other proceeding taken against him through his mistake, inadvertence, surprise, or excusable neglect.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 102; Ladd v. Mason, 10 Oreg., 308; Branson v. Oregonian Ry. Co., id., 278; Deering v. Quivey, 26 Oreg., 556; Shepperd v. Latourell, 27 id., 137; Nickling v. Robertson, 28 id., 278, 279; Willis v. Lance, 28 id., 382; Askren v. Squire, 29 id., 228; Kelly v. Pike, 17 Oreg., 330; Lovejoy v. Willamette Elko Co., 24 id., 569; Weiss v. Meyer, id., 108.

Sec. 94. **Suing defendant by fictitious name.** When the plaintiff shall be ignorant of the name of a defendant, such defendant may be designated in any pleading or proceeding by any name; and when his true name shall be discovered, the pleading or proceeding may be amended accordingly.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 103; Victorian No. 2, 26 Oreg., 197.

Sec. 95. **Pleadings before trial, how amended.** When any pleading or proceeding is amended before trial, mere clerical errors excepted, it shall be done by filing a new pleading, to be called the amended complaint, or otherwise, as the case may be. Such amended pleading shall be complete in itself without reference to the original or any preceding amended one.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 104.

Sec. 96. **Striking out pleading.** Any pleading not duly verified and subscribed may, on motion of the adverse party, be stricken out of the case. When any pleading contains more than one cause of action or defense, if the same be not pleaded separately, such pleading may, on motion of the adverse

party, be stricken out of the case. When a motion to strike out is allowed, the court may, upon such terms as may be proper, allow the party to file an amended pleading, or if the motion be disallowed, and it appear to have been made in good faith, the court may, upon like terms, allow the party to plead over.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 105; McKay v. Campbell, 1 Saw., 374; Cline v. Cline, 3 Oreg., 355.

Sec. 97. **Error not affecting substantial rights disregarded.** The court shall, in every stage of an action, disregard any error or defect in the pleadings or proceedings which shall not affect the substantial rights of the adverse party.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 106.

Sec. 98. **Supplemental pleadings.** The plaintiff and defendant respectively may be allowed on motion to make a supplemental complaint, answer, or reply, alleging facts material to the case, occurring after the former complaint, answer, or reply. Copies of all pleadings subsequent to the complaint must be served upon the adverse party or his attorney.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 107; Holladay v. Elliott, 3 Oreg., 340; Hamlin v. Kinney, 2 id., 91; Nicolai v. Krimbel, 29 Oreg., 76; White v. Allen, 3 Oreg., 103.

CHAPTER TWELVE.

OF ARREST AND BAIL.

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Sec. 99. **When defendant may be arrested.** No person shall be arrested in any civil action at law except as provided in this section. The defendant may be arrested in the following cases:

First. In an action for the recovery of money or damages when the defendant is about to remove from the district with intent to defraud his creditors, or when the action is for an injury to person, or for wilfully injuring or wrongfully taking, detaining, or converting property.

Second. In an action for a fine or penalty, or for money, or for property embezzled or fraudulently misapplied or converted to his own use by a public officer, or by an attorney, or by an officer or agent of a corporation in the course of his employment as such, or by any factor, agent, broker, or other person in a fiduciary capacity, or for any misconduct or neglect in office or in a professional employment.

Third. In an action to recover the possession of personal property unjustly

detained, when the property or any part thereof has been concealed, removed, or disposed of, so that it can not be found or taken by the marshal, and with intent that it should not be so found or taken, or with the intent to deprive the plaintiff of the benefit thereof.

Fourth. When the defendant has been guilty of a fraud in contracting a debt, or incurring the obligation for which the action is brought, or in concealing or disposing of the property for the taking, detention, or conversion of which the action is brought.

Fifth. When the defendant has removed or disposed of his property, or is about to do so, with intent to defraud his creditors.

But no female shall be arrested in any action except for injury to person, character, or property.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 108; Lewis v. Shainwald, 7 Saw., 403; Norman v. Zieler, 3 Oreg., 197; Barton v. Saunders, 16 id., 51.

Sec. 100. **Proceeding to obtain an arrest.** The mode of proceeding to obtain the arrest of the defendant for any of the causes specified in the section last preceding shall be as provided in this section.

First. At any time after the commencement of an action at law, and before judgment, the plaintiff in such action shall in the discretion of the court or the judge thereof be entitled to a writ of arrest for such defendant whenever he shall make and file with the clerk of the court in which such action is commenced, or is at the time pending, an affidavit that the plaintiff has a sufficient cause of action therein, and that the case is one of those mentioned in the section last preceding; and shall also make and file with such clerk an undertaking, with sufficient sureties, in a sum not less than three hundred dollars, and equal to the amount for which the plaintiff prays judgment. Such undertaking shall be conditioned that the plaintiff will pay all costs that may be adjudged to the defendant and all damages which he may sustain by reason of the arrest if the same be wrongful or without sufficient cause, not exceeding the amount specified in the undertaking.

Second. The affidavit may be either positive or upon information and belief; but if the latter, it shall state the facts upon which the belief is founded. The plaintiff shall also file with his undertaking the affidavits of the sureties therein, from which it must appear that such sureties are residents of the district, and that they are, taken together, worth double the amount of the sum specified in the undertaking over all debts and liabilities and property exempt from execution. No person not qualified to become bail upon arrest is qualified to become surety in an undertaking for an arrest.

Third. The writ of arrest shall be issued by the court, judge or commissioner in his or its discretion, and shall require the marshal forthwith to arrest the defendant and hold him to bail in the amount specified in the undertaking, and that in default thereof he keep him in custody until discharged by law, and to return the writ to the court from which it issued, with his doings endorsed thereon, when required by the plaintiff at any time before the defendant may be arrested, or afterwards whenever the defendant shall have been discharged from the arrest on bail or otherwise.

Fourth. The plaintiff shall deliver or cause to be delivered to the marshal, with the writ, a copy of the affidavit upon which the warrant was issued, subscribed by himself or attorney. The marshal, upon the delivery of the writ, shall endorse thereon the date of the receipt, and upon the arrest of the defendant shall deliver to him a copy of the writ and such copy of the affidavit. The marshal shall execute the writ by arresting the defendant and keeping him in custody until discharged by law.

Laws Oreg., Dec. 20, 1865; Hill's Ann. Laws, s. 109; First Barton v. Saunders, 16 Oreg., 51.

Sec. 101. **Defendant may be discharged on bail.** The defendant, at any time before execution, shall be discharged from the arrest, either upon giving bail or upon depositing the amount mentioned in the writ of arrest, as provided in this chapter.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 110.

Sec. 102. **Bail, how given.** The defendant may give bail by causing a written undertaking to be executed in favor of the plaintiff by sufficient sureties, stating their places of residence, to the effect that the defendant shall at all times render himself amenable to the process of the court during the pendency of the action, and to such as may be issued to enforce the judgment therein, or if he be arrested for the cause mentioned in the third subdivision of section ninety-nine, an undertaking to the same effect as that provided by section one hundred and twenty-seven.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 111; Paddock v. Pugh, 6 Oreg., 82; Waldron v. Harrison, 2 id., 87.

Sec. 103. **Surrender of defendant.** At any time before failure to comply with the undertaking, the bail may surrender the defendant in their exoneration, or he may surrender himself to the marshal in the following manner:

First. A certified copy of the undertaking of the bail shall be delivered to the marshal, who shall detain the defendant in his custody thereon as upon a writ of arrest, and shall by a certificate in writing acknowledge the surrender.

Second. Upon a production of a copy of the undertaking and marshal's certificate, the court may, upon a notice to the plaintiff of eight days, with a copy of the certificate, order that the bail be exonerated, and on filing the order and the papers used on the application with the clerk of the court where the action is pending, they shall be exonerated accordingly. But this section shall not apply to an arrest for cause mentioned in the third subdivision of section ninety-nine so far as to discharge the bail from an undertaking given to the effect provided by section one hundred and twenty-eight.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 112; Hume v. Morris, 5 Oreg., 478.

Sec. 104. **Bail may arrest defendant.** For the purpose of surrendering the defendant, the bail at any time and place, before they are finally charged, may themselves arrest him, or by a written authority, endorsed on a certified copy of the undertaking, may empower the marshal or any other person of suitable age and discretion to do so.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 113.

Sec. 105. **Bail, how proceeded against.** In case of the failure to comply with the undertaking, the bail may be proceeded against by action only.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 114.

Sec. 106. **Bail, how exonerated.** The bail may be exonerated either by the death of the defendant, or his imprisonment in the penitentiary, or by his legal discharge from the obligation to render himself amenable to the process, or by his surrender to the marshal or any deputy, in execution thereof, within twenty days after the commencement of the action against the bail, or within such further time as may be granted by the court.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 115.

Sec. 107. **Marshal to deliver copy of undertaking to plaintiff.** Within five days after the execution of the undertaking of the bail the marshal or deputy having the defendant in custody shall deliver to the plaintiff or his attorney, or such other person as the plaintiff may direct, a certified copy of the undertaking, with the data of the arrest indorsed thereon. In any other case the

marshal may mail such copy within the same time to the plaintiff or his attorney, within the district, or to either of them, as the plaintiff may direct. The plaintiff, within ten days from the delivery of such copy, or fifteen days from the mailing of the same, if sent by mail, may serve upon the marshal or deputy for the defendant in custody a notice that he does not accept the bail or he shall be deemed to have accepted it, and the marshal shall be exonerated from liability. If no notice be served within ten days, the original undertaking shall be filed with the court where the action is pending.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 116.

Sec. 108. **Notice of justification of bail.** On the receipt of such notice the marshal or defendant may, within ten days thereafter, give to the plaintiff or his attorney notice of the justification of the same or other bail, specifying the place of residence and occupation of the latter, before a judge of the district court or clerk of the court where the action is pending or a commissioner, at a specified time and place, the time to be not less than five nor more than ten days thereafter. In case neither the plaintiff nor his attorney reside within one hundred miles from where the arrest is made, the notice may be served upon the person and in the manner provided for serving the copy of the undertaking in the section last preceding. In case other bail be given there shall be a new undertaking, in the form and to the effect prescribed in section one hundred and two.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 117.

Sec. 109. **Qualifications of bail.** The qualifications of bail shall be as follows:

First. Each of them shall be a resident within the district; but no counsellor or attorney at law, marshal, deputy marshal, commissioner, clerk of any court, or other officer of any court shall be permitted to become bail in any action.

Second. Each of them shall be worth the amount specified in the writ of arrest, or the amount to which the same may be reduced as provided in this chapter, over and above all debts and liabilities, and exclusive of property exempt from execution; but the judge, clerk, or commissioner on justification may allow more than two sureties to justify severally in amounts less than that expressed in the writ, if the whole justification shall be equivalent to that of two sufficient bail.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 118.

Sec. 110. **Justification of bail.** For the purpose of justification, each of the bail shall attend before the judge, commissioner, or clerk at the time and place mentioned in the notice, and may be examined on oath, on the part of the plaintiff, touching his sufficiency, in such manner as the judge, commissioner, or clerk in his discretion may think proper. The examination shall be reduced to writing and subscribed by the bail, if required by the plaintiff.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 119; Holcomb v. Teal, 4 Oreg., 353.

Sec. 111. **Allowance of bail.** If the judge, commissioner, or clerk shall find the bail sufficient, he shall annex the examination to the undertaking, endorse his allowance thereon, and cause them to be filed with the clerk of the court in which the action is pending; and the marshal shall thereupon be exonerated from liability.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 120.

Sec. 112. **Deposit with marshal.** The defendant may, at the time of his arrest, instead of giving bail, deposit with the marshal the amount mentioned

in the writ. Thereupon the marshal shall give the defendant a certificate of the deposit made and the defendant shall be discharged out of custody.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 121.

Sec. 113. **Payment of deposit by marshal to clerk.** The marshal shall, within ten days after the deposit, pay the same into the court, and take from the clerk receiving the same two certificates of such payment, the one of which he shall deliver to the plaintiff or his attorney, and the other to the defendant. For any default in making such payment, the same proceedings may be had on the official bond of the marshal to collect the sum deposited as in other cases of delinquency.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 122.

Sec. 114. **Bail may be given and deposit refunded.** If money be deposited, as provided in the last two sections, bail may be given and justified upon the notice, as prescribed in section one hundred and two, at any time before judgment, and on the filing of the undertaking and justification with the clerk the money deposited shall be refunded by such clerk to the defendant.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 123.

Sec. 115. **Deposit, how disposed of.** When money shall have been so deposited, if it remain on deposit at the time of an order or judgment for the payment of money to the plaintiff, the clerk shall, under the direction of the court, apply the same in satisfaction thereof, and, after satisfying the judgment, shall refund the surplus, if any, to the defendant. If the judgment be in favor of the defendant, the clerk shall refund to him the whole sum deposited and remaining unapplied.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 124.

Sec. 116. **Liability of marshal.** If, after being arrested, the defendant escape or be rescued, or bail be not given or justified, or a deposit be not made instead thereof, the marshal himself shall be liable as bail; but he may discharge himself from such liability by the giving and justification of bail, as provided in sections one hundred and eight, one hundred and nine, one hundred and ten, and one hundred and eleven at any time before process against the person of the defendant to enforce an order or judgment in the action.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 125.

Sec. 117. **Judgment against marshal as bail.** If a judgment be recovered against the marshal upon his liability as bail, and an execution thereon be returned unsatisfied, in whole or in part, the same proceedings may be had on his official bond for the recovery of the whole or any deficiency as in other cases of delinquency.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 126.

Sec. 118. **When bail liable to marshal.** The bail taken upon arrest shall, unless they justify, or other bail be given or justified, be liable to the marshal by action for any damages which he may sustain by reason of such omission.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 127.

Sec. 119. **Plaintiff liable for maintenance of defendant.** The fees which shall be allowed to the marshal for the food and maintenance of any defendant arrested under the provisions of this chapter shall be as provided by law, and the plaintiff shall be liable in the first instance for such fees, and if required by the marshal, shall pay the same weekly in advance; and such fees so paid shall be added to the disbursements taxed or accruing in the case, and be collected as other disbursements.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 128.

Sec. 120. **Nonpayment of maintenance.** If the plaintiff shall neglect to pay such fees for three days after a demand of payment the marshal may discharge the defendant out of custody.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 129.

Sec. 121. **Motion to vacate writ of arrest.** A defendant arrested may, at any time before judgment, apply on motion to the court or judge thereof in which the action is pending upon notice to the plaintiff to vacate the writ of arrest.

Laws Oreg., Dec. 20, 1865; Hill's Ann. Laws, s. 130; Barton v. Saunders, 16 Oreg., 51.

Sec. 122. **Proceedings on motion to vacate writ of arrest.** If a motion be made upon affidavits or other proofs on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavits or other proofs in addition to those upon which the writ was issued. If upon the hearing of such motion it shall satisfactorily appear that there was not sufficient cause to allow the writ, or that there is other good cause which would entitle him to be discharged on habeas corpus the same shall be vacated, or in case he has given bail the court may discharge the same or reduce the amount thereof on good cause shown.

Laws Oreg., Dec. 20, 1865; Hill's Ann. Laws, s. 131; Barton v. Saunders, 16 Oreg., 51.

CHAPTER THIRTEEN.

OF THE RECOVERY OF PERSONAL PROPERTY.

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124. Affidavit therefor, what it must show.
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126. Undertaking to marshal on the part of plaintiff.
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128. How and when defendant entitled to redelivery.
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131. Power of marshal when property concealed in building or enclosure.
132. Property, how kept and when delivered to plaintiff.
133. Proceedings when property claimed by third person.
134. Return of affidavit by marshal.

Sec. 123. **When delivery may be claimed in action for possession of personal property.** In an action to recover possession of personal property, the plaintiff, at any time after the action is commenced, and before judgment, may claim the immediate delivery of such property, as provided in this chapter.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 132; Moser v. Jenkins, 5 Oreg., 447; Moorhouse v. Donaca, 14 id., 430; Surles v. Sweeney, 11 id., 21.

Sec. 124. **Affidavit for delivery.** When a delivery is claimed an affidavit shall be made by the plaintiff, or by some one in his behalf, showing—

First. That the plaintiff is the owner of the property claimed (particularly describing it), or is lawfully entitled to the possession thereof by virtue of a special property therein, the facts in respect to which shall be set forth;

Second. That the property is wrongfully detained by the defendant;

Third. The alleged cause of the detention thereof, according to his best knowledge, information, and belief;

Fourth. That the same has not been taken for a tax assessment or fine, pursuant to a statute, or seized under an execution or attachment against the

property of the plaintiff; or, if so seized, that it is by statute exempt from such seizure; and

Fifth. The actual value of the property.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 133; Carlon v. Dixon, 12 Oreg., 144.

Sec. 125. **Endorsement.** The plaintiff may thereupon, by an endorsement in writing upon the affidavit, require the marshal to take the property from the defendant and deliver it to the plaintiff.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 134; Carlon v. Dixon, 12 Oreg., 144

Sec. 126. **Undertaking of plaintiff to marshal.** Upon the receipt of the affidavit and endorsement thereon, with a written undertaking executed by two or more sufficient sureties approved by the marshal, to the effect that they are bound in double the value of the property as stated in the affidavit for the prosecution of the action for the return of the property to the defendant, if return thereof be adjudged, and for the payment to him of such sum as may for any cause be recovered against the plaintiff, the marshal shall forthwith take the property described in the affidavit if it be in the possession of the defendant or his agent, and retain it in his custody. He shall also, without delay, serve on the defendant a copy of the affidavit, endorsement thereon, and undertaking, by delivering the same to him personally, if he can be found, or to his agent from whose possession the property is taken; or, if neither can be found, by leaving them at the usual place of abode of either with some person of suitable age and discretion; or, if neither have any known place of abode, by putting them in the post-office directed to the defendant at the post-office nearest to him.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 135; Coos B. R. R. Co. v. Wieder, 26 Oreg., 457.

Sec. 127. **Exception to sureties by defendant.** The defendant may, within three days after the service of a copy of the affidavit and undertaking, give notice to the marshal that he excepts to the sufficiency of the sureties. If he fail to do so, he shall be deemed to have waived all objection to them. When the defendant excepts, the sureties shall justify on notice in like manner as upon bail on arrest. And the marshal shall be responsible for the sufficiency of the sureties until the objection to them is either waived, as above provided, or until they shall justify or new sureties shall be substituted and justified. If the defendant except to the sureties he can not reclaim the property as provided in the next section.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 136; Coos B. R. R. Co. v. Wieder, 26 Oreg. 459.

Sec. 128. **Redelivery to defendant.** At any time before the delivery of the property to the plaintiff, the defendant may, if he do not except to the sureties of the plaintiff, require the return thereof upon giving to the marshal a written undertaking, executed by two or more sufficient sureties, to be approved by the marshal, to the effect that they are bound in double the value of the property as stated in the affidavit of the plaintiff, for the delivery thereof to the plaintiff, if such delivery be adjudged, and for the payment to him of such sum as may, for any cause, be recovered against the defendant. If a return of the property be not so required within three days after the taking and service of a copy of the affidavit and undertaking of a defendant, it shall be delivered to the plaintiff, except as provided in section one hundred and thirty-two.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 137; Coos B. R. R. Co. v. Wieder, 26 Oreg., 459; Kimball v. Bleick, 24 Oreg., 57.

Sec. 129. **Justification of sureties.** The defendant's sureties, upon a notice to the plaintiff or his attorney of not less than two nor more than six days, shall justify before a judge of the district court or commissioner, or the clerk of the court in which the action is pending, in the same manner as upon bail on arrest. Upon such justification the marshal shall deliver the property to the defendant. The marshal shall be responsible for the defendant's sureties until they justify, or until justification is completed or expressly waived, and may retain the property until that time; but if they or others in their place fail to justify at the time and place appointed, he shall deliver the property to the plaintiff.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 138; Coos B. R. R. Co. v. Wieder, 26 Oreg., 459.

Sec. 130. **Qualification and justification of sureties.** Qualification of sureties and their justification shall be as prescribed by sections one hundred and nine and one hundred and ten in respect to bail upon an order of arrest.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 139.

Sec. 131. **Power of marshal to take property.** If the property or any part thereof be concealed in a building or enclosure the marshal shall publicly demand its delivery. If it be not delivered he shall cause the building or enclosure to be broken open and take the property into his possession, and if necessary he may call to his aid the power of the district.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 140.

Sec. 132. **Property, how kept and when delivered to plaintiff.** When the marshal shall have taken the property as in this chapter provided, he shall keep it in a secure place and deliver it to the party entitled thereto upon receiving his lawful fees for taking and his necessary expenses for keeping the same.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 141; Coos B. R. R. Co. v. Wieder, 26 Oreg., 457.

Sec. 133. **Claim of property by third person.** If the property taken be claimed by any other person than the defendant or his agent, and such person make affidavit of his title thereto or his right to the possession thereof, stating the grounds of such title or right, and serve the same upon the marshal before the delivery of the property to the plaintiff, the marshal shall not be bound to keep the property or deliver it to the plaintiff unless the plaintiff, on demand of him or his agent, shall indemnify the marshal against such claim by an undertaking, executed by two sufficient sureties, accompanied by their affidavits that they are each worth double the value of the property as specified in the affidavit of the plaintiff, over and above their debts and liabilities, exclusive of property exempt from execution. And no claim to such property by any other person than the defendant or his agent shall be valid against the marshal unless made as aforesaid; and notwithstanding such claim when so made he may retain the property a reasonable time to demand such indemnity.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 142.

Sec. 134. **Return of marshal.** The marshal shall file the affidavit, with his proceedings thereon, including an inventory of the property taken, with the clerk of the court in which the action is pending within twenty days after taking the property mentioned therein, or he may mail or forward the same to the clerk within that time.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 143

CHAPTER FOURTEEN.

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161. When restraining order may be allowed against garnishee.
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Sec. 135. **When plaintiff may have defendant's property attached.** The plaintiff, at the time of issuing the summons, or at any time afterwards, may have the property of the defendant attached as security for the satisfaction of any judgment that may be recovered, unless the defendant give security to pay such judgment, as in this chapter provided, in the following cases:

First. In an action upon a contract, express or implied, for the direct payment of money, and which is not secured by mortgage, lien, or pledge upon real or personal property, or, if so secured, when such security has been rendered nugatory by the act of the defendant.

Second. In an action upon a contract, express or implied, against a defendant not residing in the district.

Laws Oreg., Feb. 25, 1885; Hill's Ann. Laws, s. 144; Suksdorff v. Bigham, 13 Oreg., 369; Sheppard v. Yocum, 11 id., 234; Michell v. Schoonover, 16 id., 214; Hoyt v. Johnson, 27 id., 144; Meyer v. Brook, 29 id., 203; Ehrman v. Astoria Ry. Co., 26 id., 349.

Sec. 136. **Writ of attachment.** A writ of attachment shall be issued by the clerk of the court in which the action is pending, whenever the plaintiff or anyone in his behalf shall make and file an affidavit showing—

First. That the defendant is indebted to the plaintiff (specifying the amount of such indebtedness over and above all legal set-offs or counterclaims) upon a contract, expressed or implied, for the direct payment of money and that the payment of the same has not been secured by any mortgage, lien, or pledge upon real or personal property; and

Second. That the sum for which the attachment is asked is an actual, bona fide, existing debt, due and owing from the defendant to the plaintiff, and

that the attachment is not sought nor the action prosecuted to hinder, delay, or defraud any creditor of the defendant.

Laws Oreg., Nov. 25, 1885; Hill's Ann. Laws, s. 145; Crawford v. Robbins, 8 Oreg., 324; Erhman v. Astoria Ry. Co., 26 id., 349; Bank of Winnemucca v. Mulloney, 29 Oreg., 270.

Sec. 137. **Undertaking of plaintiff.** Upon filing the affidavit with the clerk, the plaintiff shall be entitled to have the writ issued as soon thereafter as he shall file with the clerk his undertaking, with one or more sureties, in a sum not less than one hundred dollars, and equal to the amount for which the plaintiff demands judgment, and to the effect that the plaintiff will pay all costs that may be adjudged to the defendant, and all damages that he may sustain by reason of the attachment, if the same be wrongful or without sufficient cause, not exceeding the sum specified in the undertaking. With the undertaking the plaintiff shall also file the affidavits of the sureties, from which affidavits it must appear that such sureties are qualified and that taken together they are worth double the amount of the sum specified in the undertaking, over all debts and liabilities and property exempt from execution. No person not qualified to become bail upon an arrest is qualified to become surety in an undertaking for an attachment.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 146; Drake v. Sworts, 24 Oreg., 198.

Sec. 138. **Writ, to whom directed, and what to state.** The writ shall be directed to the marshal and shall require him to attach and safely keep all the property of such defendant not exempt from execution, or so much thereof as may be sufficient to satisfy the plaintiff's demand, the amount of which shall be stated in conformity with the complaint, together with costs and expenses. Several writs may be issued at the same time for delivery to different deputy marshals.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 147.

Sec. 139. **What property attachable.** The rights or shares which such defendant may have in the stock of any association or corporation, together with the interest and profits thereon, and all other property in the district of such defendant, not exempt from execution, shall be liable to be attached. The marshal shall note upon the writ the date of its delivery to him, and shall make a full inventory of the property attached, and return the same with the writ.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 148; see s. 275, post.

Sec. 140. **Writ, how executed.** The marshal, or deputy marshal, to whom the writ is delivered, shall execute the same without delay, as follows:

First. Real property shall be attached, by leaving with the occupant thereof, or if there be no occupant, in a conspicuous place thereon, a copy of the writ certified by the marshal.

Second. Personal property capable of manual delivery to the marshal, and not in the possession of a third person, shall be attached by taking it into his custody.

Third. Other personal property shall be attached, by leaving a certified copy of the writ, and a notice specifying the property attached, with the person having possession of the same, or if it be a debt, then with the debtor, or if it be rights or shares in the stock of an association or corporation, or interest or profits thereof, then with such person or officer of such association or corporation as this code authorizes a summons to be served upon.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 149; Mickey v. Stratton, 5 Saw., 485; State v. Cornelius, 5 Oreg., 46; Spaulding v. Kennedy, 6 id., 208; Schneider v. Sears, 13 id., 70; Norton v. Winter, 1 id., 47; Despain v. Crow., 14 id., 404; Hughes v. Oreg. Ry. Co., 11 id., 153; Batchellor v. Richardson, 17 id., 340; Sabin v. Michell, 27 id., 67.

Sec. 141. **Effect of attachment as to third parties.** From the date of the attachment until it be discharged or the writ executed, the plaintiff as against third persons shall be deemed a purchaser in good faith and for a valuable consideration of the property, real or personal, attached, subject to the conditions prescribed in the next section as to real property. Any person, association, or corporation mentioned in subdivision three of the section last preceding, from the service of a copy of the writ and notice as therein provided, shall, unless such property, stock, or debts be delivered, transferred, or paid to the marshal, be liable to the plaintiff for the amount thereof until the attachment be discharged or any judgment recovered by him be satisfied.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 150; Rhodes v. McGarry, 19 Oreg., 228; Riddle v. Miller, id., 468; Meier v. Hess, 23 id., 599; Dickey v. Henarne, 15 id., 351.

Sec. 142. **Certificate of marshal on attachment of real property.** If real property be attached, the marshal shall make a certificate containing the title of the cause, the names of the parties, a description of such real property, and a statement that the same has been attached at the action of the plaintiff, and the date thereof. Within ten days from the date of the attachment, the marshal shall deliver such certificate to the commissioner as ex officio recorder of the recording district in which such real property is situated, who shall file the same in his office and record it in a book to be kept for that purpose. When such certificate is so filed for record the lien in favor of the plaintiff shall attach to the real property described in the certificate from the date of the attachment, but if filed afterwards it shall only attach, as against third persons, from the date of such subsequent filing. Whenever such lien shall be discharged it shall be the duty of the commissioner as ex officio recorder, when requested, to record the transcript of any order, entry of satisfaction of judgment, or other proceeding of record whereby it appears that such lien has been discharged in the book mentioned in this section. The commissioner shall also enter on the margin of the page on which the certificate is recorded a minute of the discharge, and the page and book where recorded.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 151; State v. Cornelius, 5 Oreg., 46; Boehreinger v. Craten, 10 id., 42; Riddle v. Miller, 19 Oreg., 468.

Sec. 143. **Garnishee to furnish certificate.** Whenever the marshal, with a writ of attachment against the defendant, shall apply to any person or officer mentioned in subdivision three of section one hundred and forty for the purpose of attaching any property mentioned therein, such person or officer shall furnish him with a certificate designating the amount and description of any property in his possession belonging to the defendant, or any debt owing to the defendant, or the number of rights or shares of the defendant in the stock of the association or corporation, with any interest or profits or encumbrance thereon. If such person or officer refuse to do so, or if the certificate when given be unsatisfactory to the plaintiff, he may be required by the court, or judge thereof, where the action is pending to appear before him and be examined on oath concerning the same, and disobedience to such order may be punished as contempt.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 152; Carter v. Kosland, 12 Oreg., 492; Case v. Noyes, 16 Id., 331, 539; Batcheller v. Richardson, 17 id., 340.

Sec. 144. **Sale of perishable property, etc.** If any of the property attached be perishable, the marshal shall sell the same in the manner in which property is sold on execution. The proceeds thereof and other property attached shall be retained by him to answer any judgment that may be recovered in the action, unless sooner subjected to execution upon another judgment. Personal property mentioned in subdivision three of section one hundred and

forty may be delivered, transferred, or paid to the marshal without an action, and his receipt therefor shall be a sufficient discharge accordingly.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 153.

Sec. 145. **Marshal may deliver property.** The marshal may deliver any of the property attached to the defendant, or to any other person claiming it, upon his giving a written undertaking therefor, executed by two or more sufficient sureties, engaging to redeliver it or pay the value thereof to the marshal, to whom execution upon a judgment obtained by the plaintiff in that action may be issued.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 154; Duncan v. Thomas, 1 Oreg., 314; Kohn & Co. v. Hinshaw, 17 id., 311; Coos B. R. R. Co. v. Weider, 26 id., 457.

Sec. 146. **Defense to action upon defendant's undertaking.** If an action be brought upon such undertaking against the principal or his sureties, it shall be a defense that the property for which the undertaking was given did not, at the execution of the writ of attachment, belong to the defendant against whom it was issued.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 155.

Sec. 147. **Recovery of judgment by plaintiff.** If judgment be recovered by the plaintiff, and it shall appear that the property has been attached in the action and has not been sold as perishable property or discharged from the attachment as provided by law, the court shall order and adjudge the property to be sold to satisfy the plaintiff's demands, and if execution issue thereon, the marshal shall apply the property attached by him, or the proceeds thereof, upon the execution, and if there be any such property or proceeds remaining after satisfying such execution, he shall, upon demand, deliver the same to the defendant.

Laws Oreg., Oct. 21, 1878; Hill's Ann. Laws, s. 157; Berry v. Charlton, 10 Oreg., 362; Dewitt v. Kelly, 18 id., 559.

Sec. 148. **When judgment not recovered by plaintiff.** If judgment be not recovered by the plaintiff, all the property attached, or the proceeds thereof, or the undertaking therefor, shall be returned to the defendant upon his serving upon the marshal a certified copy of the order discharging the attachment.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 158.

Sec. 149. **Order for return of property.** Whenever the defendant shall have appeared in the action he may apply upon notice to the plaintiff to the court or judge where the action is pending, or to the clerk of such court, for an order to discharge the attachment upon the execution of the undertaking mentioned in the next section; and if the application be allowed, all the proceeds of sales of property remaining in his hands shall be released from the attachment and delivered to the defendant upon his serving a certified copy of the order on the marshal.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 159; Duncan v. Thomas, 1 Oreg., 314.

Sec. 150. **Undertaking therefor.** Upon such application the defendant shall deliver to the court or judge to whom the application is made an undertaking executed by one or more sureties, to the effect that the sureties will pay to the plaintiff the amount of the judgment that may be recovered against the defendant in the action. If the plaintiff demand it, the sureties shall be required to justify in the same manner as bail upon an arrest.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 160.

Sec. 151. **Motion to discharge attachment.** The defendant may, at any time before judgment, except where the cause of attachment and the cause of action are the same, apply to the court or judge thereof where the action is pending, to discharge the attachment, in the manner and with the effect as provided in sections one hundred and twenty-one and one hundred and twenty-two for the discharge of a defendant from arrest.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 161; Bank of Winnemucca v. Mulloney, 29 Oreg., 268.

Sec. 152. **When writ to be returned.** When the writ of attachment shall be fully executed or discharged, the marshal shall return the same, with his proceedings endorsed thereon, to the clerk of the court where the action was commenced.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 162.

Sec. 153. **What order upon garnishee shall require.** The order provided for in section one hundred and forty-two shall require such person or officer to appear before such court or judge at a time and place therein stated. In the proceedings thereafter upon such order such person or association or corporation shall be known as the garnishee.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 163.

Sec. 154. **Interrogatories to garnishee.** After the allowance of the order and before such garnishee or officer thereof shall be thereby required to appear, or within a time to be specified in the order, the plaintiff may serve upon such garnishee or officer thereof written allegations and interrogatories touching any of the property liable to attachment as the property of the defendant, as provided in subdivision three of section one hundred and forty, and to which such garnishee or officer thereof is required to give a certificate as provided in section one hundred and forty-three.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 164; Case v. Noyes, 16 Oreg., 331, 539; Smith v. Conrad, 23 id., 164.

Sec. 155. **Answer of garnishee.** On the day when the garnishee or officer thereof shall be required to appear before the court or judge thereof, he shall return the allegations and interrogatories of the plaintiff to the court or judge, with his written answer thereto, unless for good cause shown a further time be allowed. Such answer shall be on oath, and shall contain a full and direct response to all the allegations and interrogatories.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 165; Faull v. Alaska G. & S. M. Co., 8 Saw., 420; Case v. Noyes, 16 Oreg., 331, 539.

Sec. 156. **Garnishee may be compelled to answer.** If the garnishee or officer thereof fail to answer, the court or judge thereof, on motion of the plaintiff, may compel him to do so, or the plaintiff may, at any time after the entry of judgment against the defendant in the action, have judgment against the garnishee for want of such answer. In no case shall judgment be given against the garnishee for a greater amount than the judgment against the defendant in the action.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 166; Case v. Noyes, 16 Oreg., 331, 539.

Sec. 157. **Exceptions to answer.** The plaintiff may except to the answer of the garnishee or officer thereof for insufficiency, within such time as may be prescribed or allowed, and if the same be adjudged insufficient, such garnishee or officer may be allowed to amend his answer, on such terms as may be proper, or judgment may be given for the plaintiff as for want of answer, or such garnishee or officer may be compelled to give a sufficient answer.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 167.

Sec. 158. **Reply to answer.** The plaintiff may reply to the whole or part of the answer within such time as may be prescribed or allowed, and the issues arising thereon shall be tried as ordinary issues of fact between plaintiff and defendant. If the answer be not excepted or replied to within the time prescribed or allowed, it shall be taken to be true and sufficient.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 168; Case v. Noyes, 16 Oreg., 331, 539.

Sec. 159. **Judgment against garnishee.** If by the answer it shall appear, or if upon trial it shall be found, that the garnishee, at the time of the service upon him or the officer thereof of the copy of the writ of attachment and notice, had any property of the defendant's liable to attachment as provided in subdivision three of section one hundred and forty and as to which such garnishee or officer thereof is required to give a certificate as provided in section one hundred and forty-three beyond the amount admitted in the certificate, or in any amount if the certificate was refused, judgment may be given against such garnishee for the value thereof in money. The garnishee may at any time before judgment discharge himself by delivering, paying, or transferring the property to the marshal.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 169.

Sec. 160. **Executions against garnishee.** Executions may issue upon judgments against a garnishee as upon ordinary judgments between plaintiff and defendant, and costs and disbursements shall be allowed and recovered in like manner. Witnesses, including the defendant and garnishee or officer thereof, may be required to appear and testify upon such proceeding against a garnishee, as upon the trial of an issue of fact.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 170.

Sec. 161. **Restraining order against garnishee.** The court or judge thereof in its discretion may, at the time of the application of the plaintiff for the order provided for in section one hundred and forty-three and at any time thereafter before judgment against the garnishee, by order restrain the garnishee from paying, transferring, or in any manner disposing of or injuring any of the property of the defendant, alleged by the plaintiff to be in the garnishee's possession, control, or owing by him to the defendant, and disobedience to such order may be punished as a contempt.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 171.

Sec. 162. **Provisional remedies.** The proceedings provided for in chapters twelve, thirteen, and fourteen of this title shall be known as provisional remedies.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 172.

CHAPTER FIFTEEN.

OF ISSUES AND THE MODE OF TRIAL.

Sec.
163. The different kinds of issues.
164. Issue of law.
165. Issue of fact.
166. When both issue of law and fact arise, issue of law to be first tried.
167. Trial defined.
168. Issues, how tried.
169. Motion to postpone trial on account of absent evidence.

Sec. 163. **Different kinds of issues.** Issues arise upon the pleadings when a fact or conclusion of law is maintained by the one party and controverted by the other. They are of two kinds—

First. Of law; and,

Second. Of fact.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 173.

Sec. 164. **Issue of law.** An issue of law arises upon a demurrer to the complaint, answer, or reply, or to some part thereof.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 174.

Sec. 165. **Issue of fact.** An issue of fact arises—

First. Upon a material allegation in the complaint controverted by the answer; or,

Second. Upon new matter in the answer controverted by the reply; or,

Third. Upon new matter in the reply, except an issue of law is joined thereon.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 175.

Sec. 166. **Issues of both law and of fact.** Issues both of law and of fact may arise upon different parts of the pleadings in the same action. In such cases the issues of law shall be first tried, unless the court otherwise direct.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 176.

Sec. 167. **Trial defined.** A trial is the judicial examination of the issues between the parties, whether they be issues of law or of fact.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 177; State v. Spors, 4 Oreg., 199.

Sec. 168. **Issues, how tried.** An issue of law shall be tried by the court, unless referred as provided in chapter twenty. An issue of fact shall be tried by a jury, unless tried by the court or referred as provided in chapters nineteen and twenty.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 178.

Sec. 169. **Motion to postpone trial.** A motion to postpone a trial on the ground of the absence of evidence shall only be made upon affidavit showing the materiality of the evidence expected to be obtained, and a statement of facts showing that due diligence has been used to procure it, and also the name and residence of the witness or witnesses. The court may also require the moving party to state upon affidavit the evidence which he expects to obtain, and if the adverse party thereupon admit that such evidence would be given, and that it be considered as actually given on the trial, or offered and overruled as improper, the trial shall not be postponed. The court, when it allows the motion, may impose such conditions or terms upon the moving party as may be just.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 179; Young v. Patten, 9 Oreg., 197.

CHAPTER SIXTEEN.

OF THE FORMATION OF THE JURY.

Sec.
170. Trial jurors, how selected.
171. Formation of jury.
172. No challenge to panel.
173. Peremptory challenge defined.
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175. General causes of challenge.
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177. Challenge for implied bias.
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181. First challenge taken by defendant; when taken.
182. Order of taking challenges.
183. Trial of challenge.
184. Proceedings in evidence on trial of challenge.
185. Challenge may be oral.
186. Oath of jury.

Sec. 170. **Trial jurors, how selected.** Jurors for the trial of issues of fact in the district of Alaska shall be selected and summoned in the manner prescribed by the laws of the United States with respect to jurors of the United States district and circuit courts, and shall have the same qualifications and be entitled to the same exemptions as are provided by law in the case of grand juries to serve in the district, it being the true intent and meaning of this section that but one jury shall be summoned for the trial of all actions, civil and criminal, triable by the district court of the district.

R. S. U. S., ss. 808, 809, 810; 23 Stat. L., c. 52, s. 2.

Sec. 171. **Formation of jury.** Trial juries in civil actions shall be formed as follows: When the action is called for trial, the clerk shall draw from the trial jury box of the court, one by one, the ballots containing the names of the jurors until the jury is completed or the ballots are exhausted. If the ballots become exhausted before the jury is complete, the marshal, under the direction of the court, shall summon from the bystanders, or the body of the district, as the court may direct, so many qualified persons as may be necessary to complete the jury. Whenever, as in this section provided, the marshal shall summon more than one person at a time from the bystanders or the body of the district, he shall return a list of the persons so summoned to the clerk. The clerk shall write the names of such persons upon separate ballots, and deposit the same in the trial jury box, and then draw such ballots therefrom, as in the case of the panel of trial jurors for the term. The jury shall consist of twelve persons, unless the parties consent to a less number. Such consent shall be entered in the journal: Provided, That hereafter in trials for misdemeanors six persons shall constitute a legal jury.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 180.

Sec. 172. **No challenge to panel.** No challenge shall be made or allowed to the panel. A challenge is an objection to a particular juror, and may be either

First. Peremptory; or,

Second. For cause.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 181; Fitzhugh v. State, 2 Oreg., 227; State v. Dale, 8 id., 229.

Sec. 173. **Peremptory challenge defined.** A peremptory challenge is an objection to a juror for which no reason need be given, but upon which the court shall exclude him.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 182.

Sec. 174. **Challenge for cause defined.** A challenge for cause is an objection to a juror, and may be either

First. General—that the juror is disqualified from serving in any action; or,

Second. Particular—that he is disqualified from serving in the action on trial.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 183.

Sec. 175. **General causes of challenge.** General causes of challenge are—

First. A conviction for felony;

Second. A want of any of the qualifications prescribed by law for a juror;

Third. Unsoundness of mind, or such defect in the faculties of the mind, or organs of the body, as renders him incapable of performing the duties of a juror.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 184; State v. McDonald, 8 Oreg., 113; State v. Powers, 10 id., 145.

Sec. 176. **Particular causes of challenge.** Particular causes of challenge are of two kinds:

First. For such bias as, when the existence of the facts is ascertained, in judgment of law disqualifies the juror, and which is known in this title as implied bias;

Second. For the existence of a state of mind on the part of a juror in reference to the action, or to either party, which satisfies the trier, in the exercise of a sound discretion, that he can not try the issue impartially and without prejudice to the substantial rights of the party challenging, and which is known in this title as actual bias.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 185; St. v. Tom, 8 Oreg., 177; Kumli v. S. P. Co., 21 id., 505; St. v. Ingram, 23 id., 434.

Sec. 177. **Challenge for implied bias.** A challenge for implied bias may be taken for any or all of the following causes, and no other:

First. Consanguinity or affinity within the fourth degree to either party;

Second. Standing in the relation of guardian and ward, attorney and client, master and servant, or landlord and tenant to the adverse party; or being a member of the family of, or a partner in business with, or in the employment for wages of the adverse party; or being surety or bail in the action called for trial, or otherwise, for the adverse party;

Third. Having served as a juror on a previous trial in the same action, or in another action between the same parties for the same cause of action, or in a criminal action against either party upon substantially the same facts or transaction;

Fourth. Interest on the part of the juror in the event of the action on the principal question involved therein.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 186; Garrison v. Portland, 2 Oreg., 124; Portland v. Kamm, 5 id., 362; Ford v. Umatilla Co., 15 id., 323.

Sec. 178. **Challenge for actual bias.** A challenge for actual bias may be taken for the cause mentioned in the second subdivision of section one hundred and seventy-six. But on the trial of such challenge, although it should appear that the juror challenged has formed or expressed an opinion upon the merits of the cause from what he may have heard or read, such opinion shall not of itself be sufficient to sustain the challenge, but the court must be satisfied from all the circumstances that the juror can not disregard such opinion and try the issue impartially.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 187; U. S. v. Hanway, 2 Wall. Jr., 139; State v. Tom, 8 Oreg., 177; State v. Saunders, 14 id., 300; Ford v. Umatilla Co., 15 id., 313; State v. Kelly, 28 id., 225; State v. Brown, id., 147.

Sec. 179. **Exemption from service on jury.** An exemption from service on a jury shall not be cause of challenge, but the privilege of the person exempted.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 188.

Sec. 180. **Either party may challenge; number of challenges.** A peremptory challenge or a challenge for cause may be taken by either party. When there are two or more parties, plaintiffs or defendants, they must join in the challenge, or it can not be taken. Either party shall be entitled to three peremptory challenges and no more.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 189.

Sec. 181. **Order in which challenges shall be made.** The defendant first and afterwards the plaintiff shall challenge for cause, and when a challenge has been sustained the vacancy shall be filled before further challenge is made, and any new juror may at any time be challenged for cause by either party

to the action. When the panel is full the defendant shall have one peremptory challenge, followed by one by the plaintiff, and so on alternately until each side has exhausted its right to such challenge.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 189.

Sec. 182. **Order of taking challenges.** The challenges of either party shall be taken separately, in the following order, including in each challenge all the causes of challenge belonging to the same class:

First. For general disqualification.

Second. For implied bias.

Third. For actual bias.

Fourth. Peremptory; but either party may take peremptory challenge at any time before his right of challenge ceases.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 191; Garrison v. Portland, 2 Oreg., 123.

Sec. 183. **Trial of challenge.** The challenge may be excepted to by the adverse party for insufficiency, and if so the court shall determine the sufficiency thereof, assuming the facts alleged therein to be true. The challenge may be denied by the adverse party, and if so, the court shall try the issue and determine the law and the fact.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 192; State v. Tom, 8 Oreg., 177; Hayden v. Long, id., 244.

Sec. 184 **Proceeding and evidence on trial of challenge.** Upon the trial of a challenge the rules of evidence applicable to testimony offered upon the trial of an ordinary issue of fact shall govern. The juror challenged, or any other person otherwise competent, may be examined as a witness by either party. If a challenge be determined to be sufficient, or found to be true, as the case may be, it shall be allowed, and the juror to whom it was taken excluded; but if determined or found otherwise it shall be disallowed.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 193.

Sec. 185. **Challenge may be oral.** The challenge, the exception, and the denial may be made orally. The judge of the court shall note the same upon his minutes, and the substance of the testimony on either side.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 194.

Sec. 186. **Oath of jury.** As soon as the number of the jury has been completed an oath or affirmation shall be administered to the jurors in substance that they and each of them will well and truly try the matter in issue between the plaintiff and the defendant, and a true verdict give according to the law and evidence as given them on the trial.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 195.

CHAPTER SEVENTEEN.

CONDUCT OF THE TRIAL BY JURY.

Sec.
187. Order of proceedings on the trial.
188. When a view may be ordered.
189. Manner of keeping jury.
190. When juror taken sick, how to proceed.
191. The charge to the jury.
192. How jury kept while deliberating; officer to be sworn.
193. Food and lodging of jurors.
194. What papers jury may take.
195. When jury may return for information.
196. When jury may be discharged without giving verdict.
197. When new trial may be had if jury discharged.

Sec.
198. Court deemed open until jury gives verdict or is discharged.
199. If juror absent when jury return, jury to be discharged.
200. Manner of giving verdict.
201. Jury may be polled, or insufficient verdict corrected.
202. When verdict complete and jury discharged, verdict to be in writing and entered on the journal.

Sec. 187. **Order of proceedings on trial.** When the jury has been completed and sworn, the trial shall proceed in the order prescribed in this section, unless the court for special reasons otherwise direct.

First. The plaintiff shall state briefly his cause of action, and the issue to be tried; the defendant shall then in like manner state his defense or counterclaim.

Second. The plaintiff shall then introduce the evidence on his part, and when he has concluded the defendant shall do the same.

Third. The parties may then respectively introduce rebutting evidence only, unless the court, for good reason, and in furtherance of justice, permit them to introduce evidence upon the original cause of action, defense or counterclaim.

Fourth. Not more than two counsel shall be allowed to address the jury on behalf of the plaintiff or defendant, unless otherwise allowed by the court; and the court may limit the time to be consumed by counsel in arguing the cause to the jury.

Fifth. When the evidence is concluded, unless the case is submitted to the jury on both sides without argument, the plaintiff shall commence and conclude the argument to the jury. If the plaintiff waive the opening argument, and the defendant then argue the case to the jury, the plaintiff shall not be permitted to reply to the argument of the defendant.

Sixth. The court shall then charge the jury, and if either party require it, and shall at the commencement of the trial give notice of his intention so to do, the charge of the court, so far as it relates to the law and the facts of the case, shall be reduced to writing and given to the jury by the court as written, without any oral explanation. The charge, when reduced to writing, must be filed with the clerk.

Laws Oreg., Oct. 22, 1870; Hill's Ann. Laws, s. 196; Long v. Lander, 10 Oreg., 175.

Sec. 188. **View of premises by jury.** Whenever, in the opinion of the court, it is proper that the jury should have a view of real property which is the subject of the litigation, or of the place in which any material fact occurred, it may order the jury to be conducted in a body, in the custody of a proper officer, to the place, which shall be shown to them by the judge, or by a person appointed by the court for that purpose. While the jury are thus absent no person shall speak to them on any subject connected with the trial.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 197; State v. Ah Lee, 8 Oreg., 214.

Sec. 189. **Keeping jury together.** The jurors may be kept together in charge of a proper officer, or may, in the discretion of the court, at any time before the submission of the cause to them, be permitted to separate; in either case they may be admonished by the court that it is their duty not to converse with any other person, or among themselves, on any subject connected with the trial, or to express any opinion thereon, until the case is finally submitted to them.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 198; State v. Shaffer, 23 Oreg., 555.

Sec. 190. **Sickness of juror.** If, after the formation of the jury, and before verdict, a juror become sick, so as to be unable to perform his duty, the court may order him to be discharged. In that case, unless the parties agree to pro-

ceed with the other jurors, a new juror may be sworn, and the trial may begin anew; or the jury may be discharged, as the court shall direct, and a new jury then or afterwards formed.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 199.

Sec. 191. **Charging the jury.** In charging the jury, the court shall state to them all matters of law which it thinks necessary for their information in giving their verdict, but it shall not present the facts of the case, but shall inform the jury that they are the exclusive judges of all questions of fact.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 200; State v. Brown, 28 Oreg., 148; State v. Hatcher, 29 id., 310; State v. Swayze, 9 id., 333; Latshaw v. Territory, 1 id., 140; Morris v. Perkins, 6 id., 350; Johnson v. Shively, 9 id., 333; Smith v. Lonsdale, 6 id., 78; Willes v. Or. R. & N. Co., 11 id., 57; Brion v. Henkell, 14 id., 474; Glenn v. Savage, id., 566.

Sec. 192. **Jury, how kept while deliberating.** After hearing the charge the jury may either decide in the jury box or retire for deliberation. If they retire they must be kept together in a room provided for them, or some other convenient place, under the charge of one or more officers, until they agree upon their verdict or are discharged by the court. The officer shall, to the utmost of his ability, keep the jury thus together separate from other persons, without drink, except water, and without food, except ordered by the court. He must not suffer any communication to be made to them, nor make any himself unless by the order of the court, except to ask them if they have agreed upon their verdict, and he shall not, before the verdict is rendered, communicate to any person the state of their deliberation or the verdict agreed on. Before any officer takes charge of a jury this section shall be read to him, and he shall be then sworn to conduct himself according to its provision, to the utmost of his ability.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 202; State v. Garrand, 5 Oreg., 228.

Sec. 193. **Food and lodging of jurors.** If while the jury are kept together, either during the progress of the trial or after their retirement for deliberation, the court order them to be provided with suitable and sufficient food and lodging, they shall be so provided by the marshal, at the expense of the United States.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 203.

Sec. 194. **What papers jury may take.** Upon retiring for deliberation the jury may take with them the pleadings in the cause, and all papers which have been received as evidence on the trial (except depositions, or copies of such parts of public records or private documents given in evidence as ought not, in the opinion of the court, to be taken from the person having them in possession). They may also take with them notes of the testimony or other proceedings on the trial taken by themselves, or any of them, but none taken by any other person.

Hill's Ann. Laws, s. 204.

Sec. 195. **Jury may return for instruction.** After the jury have retired for deliberation, if they desire to be informed on any point of law arising in the case, they may require the officer having them in charge to conduct them into court. Upon their being brought into court the instruction required shall be given by the court in the presence of or after notice to the parties or their attorneys.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 205.

Sec. 196. **Discharge without giving verdict.** Except as provided in sections one hundred and ninety and one hundred and ninety-nine of this title, or in case of some accident or calamity requiring their discharge, the jury

shall not be discharged after the cause is submitted to them until they have agreed upon a verdict and given it in open court, unless by the consent of both parties entered in the journal, or unless at the expiration of such period as the court deem proper it satisfactorily appears that there is no probability of an agreement.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 206; State v. Shaffer, 23 Oreg., 555.

Sec. 197. **New trial may be had if jury discharged.** In all cases where a jury are discharged, or prevented from giving a verdict by reason of accident or other cause during the progress of the trial, or after the cause is submitted to them, the action may be again tried immediately, or at a future time, as the court directs.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 207.

Sec. 198. **Court deemed open until jury discharged.** While the jury are absent the court may adjourn from time to time, in respect to other business, but it is nevertheless to be deemed open for every purpose connected with the cause submitted to the jury until a verdict is rendered or the jury discharged. A final adjournment of the court discharges the jury.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 208.

Sec. 199. **Discharge if juror absent when jury return.** When the jury have agreed upon their verdict they shall be conducted into court by the officer having them in charge. Their names shall then be called, and if all do not appear the rest shall be discharged without giving a verdict.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 209.

Sec. 200. **Manner of giving verdict.** If the jury appear, they shall be asked by the court or the clerk whether they have agreed upon their verdict; and if the foreman answer in the affirmative, he shall, on being required, declare the same.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 210.

Sec. 201. **Polling jury.** When a verdict is given and before it is filed, the jury may be polled on the request of either party, for which purpose each shall be asked whether it be his verdict; if any juror answer in the negative, the jury shall be sent out for further deliberation. If the verdict be informal or insufficient, it may be corrected by the jury under the advice of the court, or the jury may again be sent out.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 211; Osborne v. Morris, 21 Oreg., 368.

Sec. 202. **Completion of verdict.** When the verdict is given, and is such as the court may receive, and if no juror disagree or the jury be not again sent out, the clerk shall file the verdict. The verdict is then complete, and the jury shall be discharged from the case. The verdict shall be in writing, and under the direction of the court shall be substantially entered in the journal as of the day's proceedings on which it was given.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 212; Cline v. Bray, 1 Oreg., 89; Oreg. Ry. Co. v. Oreg. S. N. Co., 3 Oreg., 178.

CHAPTER EIGHTEEN.

OF THE VERDICT.

Sec.
203. Definition of verdict general or special.
204. In actions for the recovery of specific personal property.
205. When jury may give general or special verdict.
206. Special verdict to control general.
207. When counterclaim pleaded in the answer.

Sec. 203. **General and special verdict.** The verdict of a jury is either general or special. A general verdict is that by which the jury pronounce generally upon all or any of the issues, either in favor of the plaintiff or defendant. A special verdict is that by which the jury find the facts only, leaving the judgment to the court.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 213.

Sec. 204. **Verdict in action to recover personal property.** In an action for the recovery of specific personal property, if the property have not been delivered to the plaintiff, or the defendant by his answer claim a return thereof, the jury shall assess the value of the property, if their verdict be in favor of the plaintiff, or if they find in favor of the defendant, and that he is entitled to a return thereof, and may at the same time assess the damages, if any are claimed in the complaint or answer, which the prevailing party has sustained by reason of the detention or taking and withholding such property.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 214; Jones v. Schneider, 8 Oreg., 127; Phipps v. Taylor, 15 Oreg., id., 484; Smith v. Smith, 17 id., 445; Corbell v. Childers, 17 id., 528; Coos Bay R. R. Co. v. Weider, 26 id., 458.

Sec. 205. **When general or special verdict may be rendered.** In every action for the recovery of money only or specific real property, the jury, in their discretion, may render a general or special verdict. In all other cases the court may direct the jury to find a special verdict upon all or any of the issues; and in all cases may instruct them, if they render a general verdict, to find upon particular questions of fact, to be stated in writing. The special verdict or finding shall be filed with the clerk and entered in the journal, as provided in chapter seventeen.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 215; Swift v. Mulkey, 14 Oreg., 59; Knahtla v. O. S. L. R. Co., 1 id., 152.

Sec. 206. **Special verdict to control.** When a special finding of facts shall be inconsistent with the general verdict, the former shall control the latter, and the court shall give judgment accordingly.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 216; Rofes v. Russel, 5 Oreg., 400.

Sec. 207. **Verdict when counterclaim pleaded.** When a verdict is found for the plaintiff in an action for the recovery of money, or for the defendant when a counterclaim for the recovery of money is established beyond the amount of the plaintiff's claim as established, the jury shall also assess the amount of recovery; they may also, under the direction of the court, assess the amount of the recovery when the court gives judgment for the plaintiff on the answer.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 217; Flore v. Ladd, 29 Oreg., 528.

CHAPTER NINETEEN.

TRIAL BY THE COURT.

Sec.
208. Trial by jury, how waived.
209. Decisions of the court, how made and when filed.
210. Order of proceedings, and effect of finding.

Sec. 208. **Waiver of trial by jury.** Trial by jury may be waived by the several parties to an issue of fact, in actions on contract, and with the assent of the court in other actions, in the manner following:

First. By failing to appear at the trial;

Second. By written consent, in person or by attorney, filed with the clerk;

Third. By oral consent in open court, entered in the minutes.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 218; Johnson v. Shofner, 23 Oreg., 116; Moody v. Richards, 29 Oreg., 282.

Sec. 209. **Decisions of the court.** Upon the trial of an issue of fact by the court, its decision shall be given in writing and filed with the clerk during the term or within twenty days thereafter. The decision shall state the facts found and the conclusion of law separately, without argument or reason therefor. Such decision shall be entered in the journal and judgment entered thereon accordingly. The court may deliver any argument or reason in support of such decision, either orally or in writing, separate from the decision, and file the same with the clerk.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 219; Frush v. East Portland, 6 Oreg., 281; Finke v. Canyon R. R. Co., 5 id., 301; McFadden v. Friendly, 9 id., 222; Weissman v. Russell, 10 id., 73; Williams v. Gallic, 2 W. C. Rep., 537; Drainage Dist. v. Crow, 20 id., 536.

Sec. 210. **Order of proceedings.** The order of proceedings on a trial by the court shall be the same as provided in trials by jury. The finding of the court upon the fact shall be deemed a verdict, and may be set aside in the same manner and for the same reasons, as far as applicable, and a new trial granted.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 220; Hallock v. Portland, 8 Oreg., 29; Moody v. Richards, 29 id., 282; Drainage Dist. v. Crow, 20 id., 536.

CHAPTER TWENTY.

TRIAL BY REFEREES.

Sec.
211. The trial of any issue may be referred by consent.
212. When reference may be ordered by the court.
213. Number of referees, and how chosen.
214. When chosen by the court, qualifications of.
215. Right and mode of challenge to referees when chosen by the court.
216. Proceedings same as in trial by court.
217. What report to contain; evidence to accompany it.
218. Motion to set aside report or for judgment thereon.
219. Proceedings thereon.

Sec. 211. **Trial of issue may be referred.** All or any of the issues in the action, whether of fact or law, or both, may be referred to a referee or referees upon the written consent of the parties.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 221.

Sec. 212. **Reference ordered by court.** When the parties do not consent in an action at issue and to be tried by the court without a jury, the court may, upon the application of either, or of its own motion, direct a reference in the following cases:

First. When the trial of an issue of fact shall require the examination of a long account on either side, in which case the referees may be directed to hear and decide the whole issue or to report upon any specific question of fact involved therein; or

Second. When the taking of an account shall be necessary for the information of the court, before judgment upon an issue of law, or for carrying a judgment or order into effect; or

Third. When a question of fact other than upon the pleadings shall arise, upon motion or otherwise, in any stage of the action; or

Fourth. When it is necessary for the information of the court in a special proceeding.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 222; Boire v. McGinn, 8 Oreg., 466.

Sec. 213. **Number of referees.** A reference may be ordered to any person or persons, not exceeding three, agreed upon by the parties. If the parties do not agree the court or judge may appoint one or more, not exceeding three.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 223.

Sec. 214. **Qualifications of referees.** When the appointment of referees is made by the court or judge each referee shall be

First. Qualified as a juror as provided by statute;

Second. Competent as a juror between the parties: Provided, That in a reference to take and report testimony only, the same may be made to any competent disinterested person, regardless of the foregoing qualifications.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 224.

Sec. 215. **Challenge to referees.** When the referees are chosen by the court each party shall have the same right of challenge as to such referees, to be made and determined in the same manner and with like effect as in the formation of juries, except that neither party shall be entitled to a peremptory challenge.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 225.

Sec. 216. **Trial by referees.** Subject to the limitations and directions prescribed in the order of reference, the trial by referee shall be conducted in the same manner as a trial by the court. They shall have the same power to grant adjournments, administer oaths, to preserve order, and to punish all violations thereof upon such trial, and to compel the attendance of witnesses, and to punish them for nonattendance or refusal to be sworn or testify, as is possessed by the court.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 226; Stenson v. Esters, 3 Oreg., 521; Bohlman v. Coffin, 4 id., 313.

Sec. 217. **Referee's report.** The report of the referee shall state the facts found, and when the order of reference includes an issue of law it shall state the conclusions of law separately from the facts. The referees shall file with their report the evidence received upon the trial. If evidence offered by either party shall not be admitted on the trial, and the party offering the same except to the decision rejecting such evidence at the time, the exception shall be noted by the referees, and they shall take and receive such testimony and file it with the report. Whatever judgment the court may give upon the report, it shall, when it appears that such evidence was frivolous or inadmissible, re-

quire the party at whose instance it was taken and reported to pay all costs and disbursements thereby incurred.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 227.

Sec. 218. **Motion to set aside report.** The report shall be filed with the clerk. If it be filed in term time, either party may, within such time as may be prescribed by the rules of the court, or by special order, move to set the same aside or for judgment thereon, or such order or proceedings as the nature of the case may require. If the report be filed in vacation, the like proceedings may be had at the next term following.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 228.

Sec. 219. **Proceedings thereon.** The court may affirm or set aside the report either in whole or in part. If it affirm the report, it shall give judgment accordingly. If the report be set aside either in whole or in part, the court may make another order of reference as to all or so much of the report as is set aside to the original referees or others, or it may find the facts and determine the law itself and give judgment accordingly. Upon a motion to set aside a report, the conclusions thereof shall be deemed and considered as the verdict of a jury.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 229; Hanner v. Coffin, 1 Oreg., 99; Fahie v. Lindsay, 8 id., 474; Merchants' Bank v. Pope, 19 id., 42.

CHAPTER TWENTY-ONE.

OF EXCEPTIONS.

Sec.
220. Definition of exception; must be material.
221. Exceptions, how stated and settled.
222. No particular form required.
223. To be signed by the judge and filed. When exceptions need not be taken or allowed.
224. What deemed excepted to.

Sec. 220. **Definition of exception.** An exception is an objection taken at the trial to a decision upon a matter of law, whether such trial be by jury or court, and whether the decision be made during the formation of a jury, or in the admission of evidence, or in the charge to the jury, or at any other time from the calling of the action for trial to the rendering of the verdict or decision. But no exception shall be regarded on a motion for a new trial, or on an appeal, unless the exception be material and affect the substantial rights of the parties.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 230; State v. Drake, 11 Oreg., 396; Scott v. Cook, 1 id., 24; Oreg. Ry. Co. v. Wright, 10 id., 162; Thompson v. Backentoss, 1 id., 17; State v. Ft. You, 24 id., 67; Victoria No. 2, 26 id., 197; Tucker v. Salem F. M. Co., 15 id., 531.

Sec. 221. **Exceptions, how taken.** The point of the exception shall be particularly stated, and may be delivered, in writing, to the judge or entered in his minutes, and at the time or afterwards be corrected until made comformable to the truth.

Laws Oreg., Oct. 20, 1864; Hill's Ann. Laws, s. 231; Rhode River Mining Co. v. Walker, 1 Oreg., 341; Ah Lee v. Gong Choy, 13 id., 205; Morgan v. Thompson, id., 230; Chee Gong v. Stearnes, 16 id., 219; State v. Chee Gong, 17 id., 635; Janeway v. Holston, 19 id., 97; McQuade v. P. & V. Ry. Co., id., 535; Fiore v. Ladd, 22 id., 202; Johnston v. Oreg. S. L. R. Co., 23 id., 94; Hamilton v. Gordon, 22 id., 561.

Sec. 222. No particular form of exception required. No particular form of exception shall be required. The objection shall be stated with so much of the evidence or other matter as is necessary to explain it, but no more.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 232; Richards v. Fanning, 5 Oreg., 356; St. v. Jackson, 9 id., 457; O'Connor v. Van Hoy, 29 id., 505; St. v. Clements, 15 id., 237; Kelly v. Highfield, id., 277; Stanley v. Smith, id., 505; St. v. Jarvis 18 id., 366.

Sec. 223. When exceptions not taken or allowed. The statement of the exception, when settled and allowed, shall be signed by the judge and filed with the clerk, and thereafter it shall be deemed and taken to be a part of the record of the cause. No exception need be taken or allowed to any decision upon a matter of law when the same is entered in the journal or made wholly upon matters in writing and on file in the court.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 233; Scott v. Cook, 1 Oreg., 24; Singer Mfg. Co. v. Graham, 8 Oreg., 17; Ah Lep v. Gong Choy, 13 id., 205; Umatilla Irrig. Co. v. Bernhardt, 22 id., 389; Bridal V. L. Co. v. Johnson, 29 id., 107; Kinney v. Taylor, 29 id., 234; Tucker v. Salem Mills F. Co., 15 id., 581; Chee Gong v. Stearns, supra.

Sec. 224. What deemed excepted to. The verdict of the jury, any order or decision, partially or finally determining the rights of the parties, or any of them, or affecting the pleadings, or granting or refusing a continuance, or granting or refusing a new trial, or admitting or rejecting the evidence, provided objection be made to its admission or rejection at the time of its offer, or made upon ex parte application or in the absence of a party, are deemed excepted to without the exception being taken or stated, or entered in the journal.

CHAPTER TWENTY-TWO.

OF NEW TRIAL.

Sec.
225. Definition of new trial.
226. New trial, for what causes granted.
227. Motion for, when filed and determined.
228. Upon trial by the court and decision in vacation.
229. Motion must state grounds thereof; when supported by affidavit.
230. When counter affidavits allowed.

Sec. 225. Definition of new trial. A new trial is a re-examination of an issue of fact in the same court after a trial and decision or verdict by a court or jury.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 234.

Sec. 226. For what causes granted. The former verdict or other decision may be set aside and a new trial granted, on the motion of the party aggrieved, for any of the following causes materially affecting the substantial rights of such party:

First. Irregularity in the proceedings of the court, jury, or adverse party, or any order of the court, or abuse of discretion by which such party was prevented from having a fair trial.

Second. Misconduct of the jury or prevailing party.

Third. Accident or surprise which ordinary prudence could not have guarded against.

Fourth. Newly discovered evidence, material for the party making the application, which he could not with reasonable diligence have discovered and produced at the trial.

Fifth. Excessive damages, appearing to have been given under the influence of passion or prejudice;

Sixth. Insufficiency of the evidence to justify the verdict or other decision, or that it is against law;

Seventh. Error in law occurring at the trial and excepted to by the party making the application.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 235; State v. McDonald, 8 Oreg., 113; Arrigono v. Johnson, 6 id., 167; Lander v. Miles, 3 id., 40; Cutler v. Str. Columbia, 1 id., 101; Hallock v. City of Portland, 8 id., 29; State v. Mackey, 12 id., 154; Lonsdale v. Brown, 4 Wash. C. C., 148; Larson v. M. P. R. R. Co., 19 Oreg., 247; Hemenway v. Francis, 20 id., 458.

Sec. 227. **Motion for new trial.** A motion for a new trial, with the affidavits, if any, in support thereof, shall, except as hereinafter provided, be filed within three days after giving the verdict or other decision sought to be set aside; but the court may, upon satisfactory showing, extend the time for filing such affidavits. When the adverse party is entitled to oppose the motion by counter affidavits, he shall file the same within three days after the filing of the motion. A motion shall be heard and determined during the term unless the court continue the same for advisement or want of time to hear it.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 236; St. v. Roberts, 15 Oreg., 198; Beekman v. Hamlin, 23 id., 313.

Sec. 228. **Same, when made.** Upon a trial by the court, when the decision is given in vacation, a motion for a new trial shall be filed within twenty days from the time of filing such decision, except as hereinbefore provided.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 237.

Sec. 229. **Motion should state grounds.** In all cases of motion for a new trial the grounds thereof shall be plainly specified, and no cause of new trial not so stated shall be considered or regarded by the court. When the motion is made for a cause mentioned in subdivisions one, two, three, or four of section two hundred and twenty-six, it shall be upon affidavits setting forth the facts upon which such motion is based, unless they appear of record in the cause.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 238.

Sec. 230. **Counter affidavits, when allowed.** If the motion be supported by affidavits, counter affidavits may be offered by the adverse party; and if the cause be newly discovered evidence the affidavits of any witness or witnesses showing what their testimony will be shall be produced or good reasons shown for their nonproduction; and in the consideration of any motion for a new trial reference may be had to any proceedings in the case prior to the verdict or other decision sought to be set aside.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 239.

CHAPTER TWENTY-THREE.

OF GENERAL PROVISIONS.

Sec.
231. Questions of law and fact, how submitted and when.
232. Questions of fact to be decided by the jury.
233. Questions of law and what of fact to be decided by the court.

Sec. 231. **Questions of law and fact, submission of.** Any party may, when the evidence is closed, submit in distinct and concise propo-

sitions the conclusions of fact which he claims to be established or the conclusions of law which he desires to be adjudged, or both. They may be written and handed to the court or, at the option of the court, oral, and entered in the judge's minutes.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 240; Smith v. Shattock, 12 Oreg., 269; Knahtla v. O. S. L. R. Co., 21 id., 152.

Sec. 232. **Questions of fact to be decided by jury.** All questions of fact other than those mentioned in section two hundred and thirty-three shall be decided by the jury, and all evidence thereon addressed to them.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 241.

Sec. 233. **What questions to be decided by court.** All questions of law, including the admissibility of testimony, the facts preliminary to such admission, and the construction of statutes and other writings and other rules of evidence, are to be decided by the court, and all discussions of law addressed to it. And whenever the knowledge of the court is by this code made evidence of a fact the court is to declare such knowledge to the jury, who are bound to accept it as conclusive.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 242; Winter v. Norton, 1 Oreg., 42.

CHAPTER TWENTY-FOUR.

OF JUDGMENT IN GENERAL.

Sec.
234. Definition of judgment.
235. Judgment may be given for or against any of the parties.
236. When judgment may be given against one or more defendants and action remain pending as to others.

Sec. 234. **Judgment defined.** A judgment is the final determination of the rights of the parties in the action.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 243; U. S. v. Schooner Peggy, 1 Cranch, 102.

Sec. 235. **Judgment may be given for or against any of the parties.** Judgment may be given for or against one or more of several plaintiffs, and for or against one or more of several defendants; and it may, when the justice of the case requires it, determine the ultimate rights of the parties on each side as between themselves.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 244; Hamm v. Basche, 22 Oreg., 517.

Sec. 236. **Judgment against one or more parties.** In an action against several defendants, the court may, in its discretion, render judgment against one or more of them, whenever a several judgment is proper, leaving the action to proceed against the others.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 245; Sears v. McGrew, 10 id., 48; Hamm v. Basche, 22 Oreg., 517.

CHAPTER TWENTY-FIVE.

OF JUDGMENT OF NONSUIT.

Sec.
237. When judgment of nonsuit may be given.
238. What is a cause not sufficient to be submitted to the jury.
239. Effect of judgment of nonsuit.

Sec. 237. **Judgment of nonsuit, when given.** A judgment of nonsuit may be given against the plaintiff as provided in this chapter—

First. On motion of the plaintiff, at any time before trial, unless a counterclaim has been pleaded as a defense.

Second. On motion of either party, upon the written consent of the other filed with the clerk.

Third. On motion of the defendant, when the action is called for trial and the plaintiff fails to appear, or when, after the trial has begun and before the final submission of the cause, the plaintiff abandons it, or when, upon the trial, the plaintiff fails to prove a cause sufficient to be submitted to the jury.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 246; Simpson v. Prather, 3 Oreg., 26; Grant v. Baker, 12 id., 329; Salmon v. Oles, 9 id., 488; Cogswell v. Or. C. R. R. Co., 6 id., 417; Jacobsone v. Sidell, 12 id., 280; Bennett v. N. P. Exp. Co., 12 id., 49; Ferrera v. Parke, 19 id., 143; Rader v. McElvane, 21 id., 57; Mitchell & L. Co. v. Downing, 23 id., 448; Hume v. Woodruff, 26 id. 373.

Sec. 238. **Cause not sufficient to be submitted to jury.** A cause not sufficient to be submitted to the jury is one where it appears that if the jury were to find a verdict for the plaintiff, upon any or all of the issues to be tried, the court ought, if required, to set it aside for want of evidence to support it.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 247.

Sec. 239. **Effect of judgment of nonsuit.** When a judgment of nonsuit is given, the action is dismissed; but such judgment shall not have the effect to bar another action for the same cause.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 248.

CHAPTER TWENTY-SIX.

OF JUDGMENT ON FAILURE TO ANSWER.

Sec.
240. When judgment may be given for want of answer.

Sec. 240. **Judgment for want of answer.** Judgment may be had upon failure to answer, as follows:

When the time for answering the complaint has expired and it appears that the defendant, or one or more of several defendants, in the cases mentioned in section fifty-one, has been duly served with the summons and has failed to answer the complaint, the plaintiff shall be entitled to have judgment against such defendant or defendants—

First. In an action arising upon contract for the recovery of money or damages only; if no answer has been filed with the clerk of the court within the time specified in the summons, or such further time as may have been granted by the court or judge thereof, the clerk, upon the application of the plaintiff made in writing and filed with the clerk, shall enter the default of the

defendant, and immediately thereafter enter judgment for the amount specified in the summons, including the costs of the defendant, or against one or more of several defendants, in cases provided for in section fifty-one;

Second. In other actions, if no answer has been filed with the clerk of the court within the time specified in the summons, or such further time as may have been granted by the court or judge thereof, the clerk shall, upon the written motion of the plaintiff being filed, enter the default of the defendant, and thereafter the plaintiff may apply at the first or any subsequent term of the court for the relief demanded in the complaint; and the court shall, upon such demand, give judgment for the amount claimed in the summons, or the relief demanded in the complaint, unless it be necessary, to enable the court to give judgment or carry the same into effect, to take proof of any matter of fact, in which case the court may order the entry of judgment to be delayed until such proof be taken. The court may hear the proof itself, or make an order of reference, or order that a jury be called to inquire thereof. The defendant shall not be precluded, by reason of his default, from offering proof, in mitigation of damages;

Third. When the defendant has answered, and admits the plaintiff's claim, but sets up a counterclaim amounting to less than the plaintiff's claim, the plaintiff, on motion, shall have judgment for the excess of his claim over such counterclaim, as for want of answer thereto;

Fourth. When in any action the service of the summons appears to have been made by publication, the court may, in its discretion, order the entry of judgment to be delayed until the plaintiff file with the clerk an undertaking, with one or more sureties, to be approved by the clerk, in an amount equal to the sum for which judgment may be given, upon the condition that the plaintiff will abide by and perform any order of the court requiring restitution to be made to the defendant or his representative in case either of them shall afterwards be admitted to defend the action. The sureties in the undertaking shall have the qualifications of bail, and justify before the clerk as provided in section one hundred and nine.

Laws Oreg., Dec. 20, 1865; Hill's Ann. Laws, s. 249; Graydon v. Thomas, 3 Oreg., 250; Willamette F. Co. v. Clark, 1 id., 13; Smith v. Elledale Mfg. Co., 4 id., 70; Tolmie v. Otchin, 1 id., 95; Neal v. Tolman, 12 id., 209; Deane v. Willamette F. Co., 22 id., 168.

CHAPTER TWENTY-SEVEN.

OF JUDGMENT BY CONFESSION.

Sec.
241. Judgment by confession where action pending.
242. Who to make confession.
243. When judgment may be given against several defendants on the confession of one.
244. Confession to be in writing; how judgment given.
245. Judgment by confession without action.
246. How confession made in such cases.
247. Same subject. Execution when judgment for installments.

Sec. 241. Judgment by confession. On the confession of the defendant, with the assent of the plaintiff or his attorney, judgment may be given against the defendant in any action, before or after answer, for any amount or relief not exceeding or different from that demanded in the complaint.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 250; Allen v. Norton, 6 Oreg., 344; Miller v. Bank of British Col., 2 id., 291.

Sec. 242. **Who may make confession.** When the action is against a public corporation or a private corporation, the confession shall be made by the person who at the time sustains the relation to such corporation as would authorize the service of a summons upon him. In all other cases the confession shall be made by the defendant in person.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 251; Miller v. Bank British Columbia, 2 Oreg., 291; Miller v. Oregon City Mfg. Co., 3 Oreg., 24.

Sec. 243. **Judgment against several on confession of one.** When the action is upon a contract, and against one or more defendants jointly liable, judgment may be given on the confession of one or more defendants against all the defendants thus jointly liable, whether such defendants have been served with the summons or not, to be enforced only against their joint property and against the joint and separate property of the defendant making the confession.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 252; Richardson v. Fuller, 2 Oreg., 179.

Sec. 244. **Confession, how made.** The confession and assent thereto shall be in writing, and subscribed by the parties or their attorneys making the same, and acknowledged by each before some officer authorized to take acknowledgments of deeds, but such acknowledgment is not required when the parties or their attorneys shall appear in court when the judgment is given, or before the clerk in vacation by whom the judgment is entered. In all cases the confession and assent thereto and the acknowledgment, if any, shall be filed with the clerk.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 253.

Sec. 245. **Judgment by confession without action.** On the confession of any person capable by this code of being made a party defendant to an action, judgment may be given against such person without action, in term time or vacation, in favor of anyone, either for money due or to become due, or to secure any person against contingent liability on behalf of the defendant in such judgment, or both, if it be in favor of the same person.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 254.

Sec. 246. **Same subject.** The confession shall be made, assented to, and acknowledged, and judgment given in the same manner as a confession in an action pending; besides which, the confession shall be verified by the oath of the party making it, and shall authorize a judgment to be given for a particular sum. If it be for money due or to become due it shall state plainly and concisely the facts out of which such indebtedness arose, and shall show that the sum confessed therefor is justly due or to become due.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 256; Miller v. Bank British Columbia, 2 Oreg., 291; Miller v. Oreg. City Mfg. Co., 3 id., 24; Richardson v. Fuller, 2 id., 179.

Sec. 247. **Contingent liabilities.** Judgment by installments. If it be for the purpose of securing the plaintiff in the judgment against a contingent liability, it shall state plainly and concisely the facts constituting such liability and shall show that the sum confessed therefor does not exceed the same. When judgment is given so as to be payable in installments, executions may issue to enforce the payment of such installments as they become due.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 256; Allen v. Norton, 6 Oreg., 344.

CHAPTER TWENTY-EIGHT.

OF SUBMITTING CONTROVERSY WITHOUT ACTION.

Sec.
248. Controversy may be submitted without action.
249. Statement of the case and verification thereof.
250. Statement to be filed with the clerk. Jurisdiction of court.

Sec. 248. **Controversy may be submitted without action.** Parties to a question in controversy which might be the subject of an action in a court of record, with such parties plaintiffs or defendants, may submit the same to the determination of such court without action, as in this chapter provided.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 257.

Sec. 249. **Statement and verification.** The parties as plaintiff and defendant shall state, in writing, a case containing the facts upon which the controversy depends, and subscribe the same in person or by their attorneys. Such statement shall be verified by the oaths of the parties, or, where there is more than one plaintiff or defendant, by at least one of each, to the effect that the controversy is real, and the proceeding is taken in good faith to determine the rights of the parties. Where either party to the controversy is a public corporation, or a private corporation, the statment of the case may be subscribed and verified by any person who at the time sustains the relation to such corporation as would authorize the service of a summons upon him.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 258.

Sec. 250. **Statement to be filed.** The statement shall be filed with the clerk, and from the date of such filing the court shall have jurisdiction of the controversy as if the same were an action pending after a special verdict found, and shall proceed to hear and determine the same accordingly.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 259.

CHAPTER TWENTY-NINE.

OF THE MANNER OF GIVING AND ENTERING JUDGMENT.

Sec.
251. Judgment to be entered in journal, manner of entry.
252. If counterclaim exceeds plaintiff's demand, judgment for defendant.
253. Judgment in actions for the recovery of personal property.
254. What entry to state in judgment for want of answer.
255. Judgment on demurrer.
256. When entry of judgment made.
257. Judgment notwithstanding the verdict.
258. When entry of judgment made after motion for new trial decided in vacation.
259. Entry of judgment after the time prescribed.

Sec. 251. **Entry of judgment, how made and when made.** All judgments shall be entered by the clerk in the journal, and shall specify clearly the amount to be recovered, the relief granted, or other determination of the action. If entered in vacation, the entry shall be entitled and dated substantially as follows:

UNITED STATES OF AMERICA,
District of Alaska.

Precinct———.

District court for the district of Alaska. In vacation, after the——— term, A. D. 19——.

———the———A. D. 19——,

as the fact may be, and such entry shall have the same effect as if entered in term time. In the entry of all judgments, except judgments by default for want of an answer, the clerk shall be subject to the direction of the court.

Laws Oreg., Dec. 20, 1865; Hill's Ann. Laws, s. 260.

Sec. 252. **Judgment in case of counterclaim.** If a counterclaim established at the trial exceed the plaintiff's demand so established, judgment for the defendant shall be given for the excess; or if it appear that the defendant is entitled to any other affirmative relief judgment shall be given accordingly.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 261.

Sec. 253. **Judgment in action for recovery of personal property.** In an action to recover the possession of personal property, judgment for the plaintiff may be for the possession, or the value thereof in case a delivery can not be had, and damages for the detention thereof. If the property have been delivered to the plaintiff and the defendant claim a return thereof, judgment for the defendant may be for a return of the property, or the value thereof in case a return can not be had, and damages for taking and withholding the same.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 262.

Sec. 254. **Judgment for want of answer, on confession, etc.** When judgment is given for want of answer, the entry shall state substantially that the defendant has been duly served with the summons and has failed to answer the complaint. When judgment is given on confession, with or without action, on the report of referees or on a controversy submitted without action, the entry shall state in like manner the confession and assent thereto, the report of the referees, or agreed case, as the case may be.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 263.

Sec. 255. **Judgment on demurrer.** When a decision has been made sustaining or overruling a demurrer, unless the party against whom the decision is made be allowed to amend or plead over, judgment shall be given for the plaintiff or defendant, as the case may be, for such amount or relief, or to such effect, as it appears from the pleadings he is entitled to; but if the case is otherwise at issue upon a question of fact, the court may order the entry of judgment to be delayed until such issue be tried or otherwise disposed of.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 264.

Sec. 256. **When entry of judgment made.** When judgment is given in any of the cases mentioned in the two sections last preceding, unless otherwise ordered by the court, it shall be entered by the clerk within the day it is given. Except as in this section hereinafter provided, when a trial by the court has been had judgment shall be entered by the clerk in conformity with the decision within two days from the time the same is filed; or if the trial be by jury, judgment shall be given by the court in conformity therewith, and entered by the clerk within two days from the time the verdict has been received, and in either case within the term at which such judgment is given.

First. When the court is in doubt what judgment ought to be given, it may order the question to be reserved for argument or further consideration, and thereupon the entry of judgment shall be delayed until judgment be given;

Second. When, within the time allowed to file a motion for new trial, either party shall file a motion for a particular judgment, or for judgment notwithstanding the verdict or decision; or,

Third. When a motion for new trial is filed within the time prescribed, the entry of judgment shall be thereby delayed until the motion is disposed of;

Fourth. When, upon a trial by the court, its decision is filed in vacation, the entry of judgment shall be delayed until the expiration of the time prescribed to file a motion for a new trial.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 264.

Sec. 257. **Judgment notwithstanding verdict.** When it appears from the pleadings that the court has not jurisdiction of the subject of the action or the person of the defendant, or that the facts stated in the pleadings of the plaintiff or defendant, as the case may be, do not constitute a cause of action or defense thereto, on motion judgment shall be given for the plaintiff or defendant, as the case may be, notwithstanding the verdict or decision.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 266; Aikin v. Coolidge, 12 Oreg., 244; Specht v. Allen, 12 id., 117; Hemenway v. Francis, 20 id., 458; Agricultural Works v. Craighton, 21 id., 500.

Sec. 258. **Entry of judgment after motion for new trial, etc., decided in vacation.** When a motion for new trial, for a particular judgment, or for a judgment notwithstanding the verdict is decided in vacation, the decision shall be in writing and filed with the clerk. Within the day of such filing judgment shall be entered by the clerk in conformity with the decision.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 267.

Sec. 259. **Entry of judgment after time prescribed.** When the clerk is unable or omits to enter judgment within the time prescribed in this chapter, if the judgment has been given in vacation, it may be entered at any time thereafter, of the date which it is actually entered; if it has been given in term time, it may be entered at any time during the term, of the day's proceedings on which it should have been entered, or, on motion of the party entitled, at any subsequent term, of the day on which it is actually entered.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 268.

CHAPTER THIRTY.

OF LIEN JUDGMENT AND FINAL RECORD.

Sec.
260. Judgment to be lien from time of the docketing.
261. Expiration of lien; when revived.
262. Conveyance; when void as against lien.
263. Clerk must make judgment roll.
264. Final record; in what cases required.

Sec. 260. **Judgment to be lien from time of docketing.** Immediately after the entry of judgment in any action the clerk shall docket the same in the judgment docket. At any time thereafter, while an execution might issue upon such judgment, and the same remains unsatisfied in whole or in part, the plaintiff, or in case of his death his representative, may file a certified transcript of the original docket in the office of the recorder of any recording district that may have been established in said district in accordance with law. Upon the filing of such transcript the recorder shall docket the same in the judgment docket of his office. From the date of docketing a judgment as

in this chapter provided, or the transcript thereof, such judgment shall be a lien upon all the real property of the defendant within the recording district or districts where the same is docketed, or which he may afterwards acquire therein, during the time an execution may issue thereon.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 269; In re Boyd, 4 Saw., 266; Stannis v. Nicholson, 2 Oreg., 332; Craighton v. Leeds, 9 id., 215; Delashmutt v. Selwood, 10 id., 319; Smith v. Ingles, 2 id., 43; Bloomfield v. Humason, 11 id., 229; Berrit v. Furnish, 21 id., 19.

Sec. 261. **Expiration and renewal of lien.** Whenever, after the entry of judgment, a period of ten years shall elapse without an execution being issued on such judgment, the lien thereof shall expire. If afterwards leave is given to issue execution thereon, a transcript of the docket of the order allowing the same may be docketed in any other recording district in said district in the same manner as a judgment. From the date of the docketing such order, or a transcript thereof, the lien of the judgment shall begin anew, and continue in all respects as upon the first docketing of the same.

Laws Oreg., Oct. 20, 1864; Hill's Ann. Laws, s. 270; Murch v. Moore, 2 Oreg., 189.

Sec. 262. **Priority of lien over unrecorded conveyance.** A conveyance of real property or any portion thereof or interest therein shall be void against the lien of a judgment unless such conveyance be recorded at the time of docketing such judgment or the transcript thereof, as the case may be.

Laws Oreg., Oct. 20, 1864; Hill's Ann. Laws, s. 271; Baker v. Woodward, 12 Oreg., 3; Riddle v. Miller, 19 id., 468; Meier v. Kelly, 22 id., 141.

Sec. 263. **Judgment roll.** After docketing the judgment, and before the next regular term of court, the clerk shall prepare and file in his office the judgment roll, as provided in this section.

First. If the complaint has not been answered by any defendant he shall attach together in the order of their filing, issuing, and entry, the complaint, summons, and proof of service, and a copy of the entry of judgment.

Second. In all other cases he shall attach together in like manner the summons and proof of service, the pleadings, bill of exceptions, all orders relating to change of parties, together with a copy of the entry of judgment, and all other journal entries or orders in any way involving the merits and necessarily affecting the judgment.

Third. In all cases the clerk shall attach upon the outside of the judgment roll a blank sheet of paper upon which he shall endorse the name of the court, the term at which judgment was given, the names of the parties to the action and the title thereof, for whom judgment was given and the amount or nature thereof, and the date of its entry and docketing.

Laws Oreg., Oct. 20, 1864; Hill's Ann. Laws, s. 272; Johns v. Marin Co., 4 Oreg., 46; Carlin v. Highberg, 2 id., 77; Abraham v. Owens, 20 id., 514; Tatum v. Massie, 2 id., 140.

Sec. 264. **Final record.** Instead of the judgment roll prescribed in the section last preceding, there shall be a final record made of the cause, as provided in this section.

First. When in any action it shall appear that the title to real property, or any interest therein, or any easement, franchise, or right in or to the same, is directly determined or affected by the judgment therein, on motion of either party, the court shall order that a final record be made of the case, and the expense of such record shall be taxed as other disbursements of the action.

Second. In all other actions, on motion of either party, the court shall order that a final record be made of the the case, at the cost of the party moving for the same.

When a final record is ordered, it shall be made by the clerk within the

time prescribed to prepare a judgment roll, by recording the papers and journal entries required in such roll, in the order prescribed therefor.

Laws Oreg., Oct. 20, 1864; Hill's Ann. Laws, s. 273; Dray v. Crich, 3 Oreg., 300; Howell v. State, 1 id., 241.

CHAPTER THIRTY-ONE.

OF THE ENFORCEMENT OF JUDGMENT.

Sec.
265. When judgment may be enforced by execution.
266. Different kinds of executions.
267. By whom issued, what to contain and require.
268. How endorsed by marshal and when returnable.
269. When execution issued against the person.
270. How person arrested on execution imprisoned.
271. Execution against property may issue after death of judgment debtor, except.
272. Exemption of homestead from judicial sale.
273. What property liable to execution and what exempt.
274. Execution against property; how executed.
275. Same subject.
276. When garnishee gives marshal certificate, how marshal to proceed.
277. When marshal may leave personal property in possession of judgment debtor.
278. Notice of sale on execution, how given.
279. Sales, where and how made.
280. When marshal may adjourn sale.
281. Bill of sale and delivery by marshal of personal property.
282. When execution not to issue except by leave of the court and how leave obtained.

Sec.
283. Confirmation of sale of real estate, proceedings thereon.
284. Who liable for purchase money in case of eviction of purchaser.
285. Contribution among joint judgment debtors.
286. Sale of real property, when absolute and when subject to redemption.
287. Who may redeem.
288. When lien creditor may redeem from purchaser.
289. When lien creditor may redeem from redemptioner.
290. When judgment debtor may redeem.
291. Purchaser or redemptioner, when entitled to conveyance.
292. Mode of proceeding to redeem.
293. Court may restrain waste prior to conveyance.
294. Who entitled to possession from time of sale to conveyance.
295. Order to examine judgment debtor.
296. Examination of judgment debtor, proceedings thereon.
297. Restraining order against judgment debtor.
298. When judgment debtor may be arrested.
299. Order to examine garnishee, proceedings thereon.
300. What officers not liable to answer as garnishee.

Sec. 265. **Enforcement of judgment by execution.** The person in whose favor a judgment is given which requires the payment of money, the delivery of real or personal property, or either of them, may at any time after the entry thereof have a writ of execution issued for its enforcement as provided in this chapter.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 274; U. S. v. Drenin, Hemp., 325; Allen v. Norton, 6 Oreg., 344.

Sec. 266. **Kinds of Execution.** There shall be three kinds of execution: One against the property of the judgment debtor, another against his person, and the third for the delivery of the possession of real or personal property, or such delivery with damages for withholding the same.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 275.

Sec. 267. **By whom issued and what to contain.** The writ of execution shall be issued by the clerk and directed to the marshal. It shall contain the name of the court, the names of the parties to the action, and the title thereof; it shall substantially describe the judgment, and if it be for money, shall state the amount actually due thereon, and shall require the marshal substantially as follows:

First. If it be against the property of the judgment debtor and the judgment directs particular property to be sold, it shall require the marshal to sell such particular property and apply the proceeds as directed by the judgment; otherwise it shall require the marshal to satisfy the judgment, with interest, out of the personal property of such debtor; and if sufficient personal property can not be found, then out of the real property belonging to him on the day when the judgment was docketed in the recording district, or at any time thereafter.

Second. If it be issued after the death of the judgment debtor, and be against real or personal property, it shall require the marshal to satisfy the judgment, with interest, out of any property belonging to the deceased debtor in the hands of the debtor's personal representatives, heirs, devisees, legatees, tenants of real property, or trustees as such.

Third. If it be against the person of the judgment debtor, it shall require the marshal to arrest such debtor and commit him to jail until he shall pay the judgment, with interest, or be discharged according to law.

Fourth. If it be for the delivery of the possession of real or personal property, it shall require the marshal to deliver the possession of the same, particularly describing it, to the party entitled thereto, and may at the same time require the marshal to satisfy any costs, charges, damages, or rents, and profits recovered by the same judgment, out of the personal property of the party against whom it was rendered, and the value of the property for which the judgment was recovered to be specified thereof, if a delivery thereof can not be had; and if sufficient personal property can not be found, then out of the real property, as provided in the first subdivision of this section, and in that respect it is to be deemed an execution against property.

Laws Oreg., Oct. 21, 1878; Hill's Ann. Laws, s. 276; Bower v. Holladay, 18 Oreg., 495.

Sec. 268. **Endorsement from time of return.** The marshal shall endorse upon the writ of execution the time when he received the same, and such execution shall be returnable, within sixty days after its receipt by the marshal, to the clerk's office from whence it issued.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 278.

Sec. 269. **Execution against the person.** If the action be one in which the defendant might have been arrested, as provided by section ninety-nine, an execution against the person of the judgment debtor may be issued after the return of the execution against his property unsatisfied in whole or in part, as follows:

First. When it appears from the record that the cause of action is also a cause of arrest, as prescribed in section ninety-nine, such execution may issue of course;

Second. When no such cause of arrest appears from the record, such execution may issue for any of the causes prescribed in section ninety-nine that may exist at the time of the application therefor, upon leave of the court or judge thereof;

Third. When the defendant has been provisionally arrested in the action, or an order has been made allowing such arrest, and in either case the order has not been vacated, such execution may issue of course;

Fourth. When execution is issued against the person of the defendant by

leave of the court, it shall be applied for and allowed in the manner provided in section one hundred for allowing a writ of arrest, except that the undertaking need not be for an amount exceeding the judgment. A defendant arrested on execution, who has not been arrested provisionally, may at any time be discharged from such arrest for the causes and in the manner provided in sections one hundred and twenty-one and one hundred and twenty-two for the discharge of a defendant who has been provisionally arrested.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 279.

Sec. 270. **Imprisonment on execution.** A person arrested on execution shall be imprisoned in jail, and kept at his own expense until satisfaction of the execution, or his legal discharge, but the plaintiff shall be liable in the first instance for such expense, as in other cases of arrest, in the same manner and to the same extent as prescribed in sections one hundred and eighteen and one hundred and nineteen.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 280.

Sec. 271. **Execution after death of judgment debtor.** Notwithstanding the death of a party after judgment, execution thereon against his property, or for the delivery of real or personal property, may be issued and executed in the same manner and with the same effect as if he were still living, but such execution shall not issue within six months from the granting of letters testamentary or of administration upon the estate of such party, without leave of the commissioner having authority to issue letters testamentary or of administration upon said estate.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 281; Bower v. Holladay, 18 Oreg., 495; Berritt v. Furnish, 21 Oreg., 19.

Sec. 272. **Exemptions of homesteads from judicial sale.** The homestead of any family, or the proceeds thereof, shall be exempt from judicial sale for the satisfaction of any liability hereafter contracted or for the satisfaction of any judgment hereafter obtained on such debt. Such homestead must be the actual abode of and owned by such family or some members thereof. It shall not exceed two thousand, five hundred dollars in value, nor exceed one hundred and sixty acres in extent if not located in a town or city laid off into blocks or lots, or if located in any such town or city, then it shall not exceed one-fourth of one acre. This act shall not apply to decrees for the foreclosure of any mortgage properly executed; but if the owners of such homestead be married, then it shall be executed by husband and wife. When any officer shall levy upon such homestead, the owner thereof, or the wife, husband, agent, or attorney of such owner, may notify such officer that he claims such premises as his homestead, describing the same by metes and bounds, lot or block, or legal subdivision of the United States, whereupon such officer shall notify the creditor of such claim, and if such homestead shall exceed the maximum in this section, and he deem it of greater value than two thousand five hundred dollars, then he may direct the marshal to select three disinterested persons, who shall examine and appraise such homestead under oath, commencing with the twenty acres of lot upon which the dwelling is located, appraising each lot or twenty acres separately; and if the same exceed two thousand five hundred dollars, then the marshal shall proceed to sell all in excess of two thousand five hundred dollars by lots or smallest legal subdivisions, offering them in the order directed by the judgment debtor, if he chooses to direct; otherwise he shall sell the same as aforesaid so as to leave the homestead as compact as possible. The homestead aforesaid shall be exempt from sale or any legal process after the death of the person entitled

thereto for the collection of any debts for which the same could not have been sold during his lifetime.

Sec. 273. **What property exempt from execution.** All other property, including franchises or rights or interests therein, of the judgment debtor shall be liable to an execution, except as in this section provided. The following property shall be exempt from execution if selected and reserved by the judgment debtor or his agent at the time of the levy, or as soon thereafter before sale thereof as the same shall be known to him, and not otherwise:

First. The earnings of the judgment debtor for his personal services rendered at any time within sixty days next preceding the levy of execution or attachment, when it appears by the debtor's affidavit or otherwise that such earnings are necessary for the use of his family supported in whole or in part by his labor;

Second. Books, pictures, and musical instruments owned by any person, to the value of seventy-five dollars.

Third. Necessary wearing apparel owned by any person for the use of himself or his family: Provided, Watches or jewelry exceeding in value the sum of one hundred dollars shall not be exempt by virtue of this subdivision.

Fourth. The tools, implements, apparatus, team, vehicle, harness, or library necessary to enable any person to carry on the trade, occupation, or profession by which such person habitually earns his living to the value of five hundred dollars; also sufficient quantity of food to support such team, if any, for six months; the word "team" in this subdivision shall not be construed to include more than one yoke of oxen, or a span of horses or mules, or two reindeers, or six dogs, as the case may be.

Fifth. The following property, if owned by the head of a family and in actual use or kept for use by and for his family, or when being removed from one habitation to another on a change of residence: Ten sheep with one year's fleece or the yarn or cloth manufactured therefrom; two cows and five swine; household goods, furniture, and utensils to the value of three hundred dollars; also food sufficient to support such animals, if any, for six months, and provisions actually provided for family use and necessary for the support of such person and family for six months.

Sixth. The seat or pew occupied by the head of a family or his family in a place of public worship.

Seventh. All property of any public or municipal corporation.

Eighth. No article of property, or if the same has been sold or exchanged, then neither the proceeds of such sale nor the articles received in exchange therefor shall be exempt from execution issued on a judgment recovered for its price.

Laws Oreg., Feb. 25, 1885; Hill's Ann. Laws, ss. 282, 313; Stewart v. McClung, 12 Oreg., 431; Hughes v. Oreg. Ry. Co., 11 id., 158; Harrisburg L. Co. v. Washburn, 29 id., 150; Bank of Idaho v. Malhue Co., 30 Oreg., 420.

Sec. 274. **Execution against property, enforcement of.** When the writ of execution is against the property of the judgment debtor, it shall be executed by the marshal as follows:

First. If property has been attached, he shall endorse on the execution, and pay to the clerk forthwith, the amount, if any, of the proceeds of sales of perishable property, or debts due the defendant received by him, sufficient to satisfy the judgment;

Second. If the judgment is not then satisfied and property has been attached and remains in his custody, he shall sell the same or sufficient thereof to satisfy the judgment;

Third. If then any portion of the judgment remains unsatisfied, or if no property has been attached, or the same has been discharged, he shall levy on the property of the judgment debtor sufficient to satisfy the judgment.

Fourth. Property shall be levied on in like manner and with like effect as similar property is attached, as provided in sections one hundred and forty, one hundred and forty-one, and one hundred and forty-three, omitting the filing of the certificate provided for in section one hundred and forty-two.

Fifth. Until a levy, property shall not be affected by the execution. When property has been sold or debts received by the marshal on execution, he shall pay the proceeds thereof, or sufficient to satisfy the judgment, to the clerk by the day on which the writ is returnable.

Sixth. When property has been attached, and it is probable that such property will not be sufficient to satisfy the judgment, the execution may be levied on other property of the judgment debtor without delay. If after satisfying the judgment any property or the proceeds thereof remain in the custody of the marshal, he shall deliver the same to the judgment debtor.

Laws Oreg. Oct. 11, 1862; Hill's Ann. Laws, s. 283; Wright v. Young, 6 Oreg., 87; Bachellor v. Richardson, 17 id., 340.

Sec. 275. **Same subject.** In the case of property in the possession of or owing from any garnishee mentioned in section one hundred and forty-two, the marshal shall proceed as follows:

First. If it appear from the certificate of the garnishee that he is owing a debt to the judgment debtor, which is then due, if such debt is not paid by such garnishee to the marshal on demand, he shall levy on the property of the garnishee for the amount thereof, in all respects as if the execution was against the property of the garnishee. But if such debt be not then due, the marshal shall sell the same according to the certificate, as other property.

Second. If in like manner it appear that the judgment debtor has rights or shares in the stock of the garnishee, as provided in section one hundred and forty-two, the marshal shall sell the same according to the certificate, as other property.

Third. If in like manner it appear that the garnishee has other personal property of the judgment debtor in his possession, and the same has not been bailed to such garnishee for a period then unexpired, unless the same be delivered to the marshal on demand, he shall levy upon the same wherever he may find it. But if such property is in the possession of such garnishee upon a bailment then unexpired, the marshal shall sell the same, or the interest of the judgment debtor therein, according to the certificate, as other property.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 284; Williams v. Gallick, 11 Oreg., 337.

Sec. 276. **When garnishee gives certificate.** When a marshal with an execution levies upon any of the personal property mentioned in subdivision three of section one hundred and forty and if the same is not delivered, paid, or transferred to him at the time, and the garnishee furnish him the certificate required in section one hundred and forty-three he shall proceed thereafter in reference to such property as provided in section two hundred and seventy-four of this title. Such property may be delivered, paid, or transferred to the marshal at the time of levy, or sufficient thereof to satisfy the execution, and the marshal's receipt to the person, association, or corporation, as the case may be, shall be a sufficient discharge therefor.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 285.

Sec. 277. **Forthcoming bond.** When the marshal shall levy upon personal property by virtue of an execution, he may permit the judgment debtor to retain the same, or any part thereof, in his possession until the day of sale, upon the defendant executing a written undertaking to the marshal with sufficient

surety, in double the value of such property, to the effect that it shall be delivered to the marshal at the time and place of sale, and for nondelivery thereof an action may be maintained upon such undertaking by the marshal or the plaintiff in the execution; but the marshal shall not thereby be discharged from his liability to the plaintiff for such property.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 290.

Sec. 278. **Notice of sale on execution.** Before the sale of property on execution, notice thereof shall be given, as follows:

First. In case of personal property, by posting a written or printed notice of the time and place of sale in three public places within five miles of the place where the sale is to take place, not less than ten days prior to the day of sale; one of said notices shall be posted on the door of the post-office nearest to the place where the sale is to take place;

Second. In case of real property, by posting a similar notice, particularly describing the property, for four weeks prior to the day of sale, in three public places as provided in the first subdivision of this section and publishing a copy thereof once a week, for the same period, in a newspaper published nearest to the place of sale.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 291; O'Hara v. Parker, 27 Oreg., 157.

Sec. 279. **Proceedings at sale.** All sales of property upon execution shall be made by auction, between nine o'clock in the morning and four o'clock in the afternoon. After sufficient property has been sold to satisfy the execution, no more shall be sold. Neither the officer holding the execution nor his deputy shall become a purchaser or be interested in any purchase at such sale. When the sale is of personal property capable of manual delivery, and not in the possession of a third person, association, or corporation, it shall be within view of those who attend the sale, and be sold in such parcels as are likely to bring the highest price, and when the sale is of real property, and consists of several known lots or parcels, they shall be sold separately or otherwise, as is likely to bring the highest price, or when a portion of such real property is claimed by a third person and he requires it to be sold separately, such portion of it shall be sold separately.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 292; Bank v. Page, 7 Oreg., 454; Stephens v. Dennison, 1 id., 19; Boys v. Trulson, 25 id., 109; O'Hara v. Parker, 27 id., 157; Balfour v. Burnett, 28 id., 72.

Sec. 280. **Adjournment of sale.** If, at the time appointed for the sale, the marshal should be prevented from attending at the place appointed, or being present should deem it for the advantage of all concerned to postpone the sale for want of purchasers, or other sufficient cause, he may postpone the sale not exceeding one week next after the day appointed, and so from time to time for the like cause, giving notice of every adjournment by public proclamation made at the same time. The marshal for like causes may also adjourn the sale from time to time, not exceeding thirty days beyond the day at which the writ is made returnable, with the consent of the plaintiff endorsed upon the writ.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 293.

Sec. 281. **Delivery of personal property to purchaser.** When the purchaser of any personal property capable of manual delivery, and not in the possession of a third person, association, or corporation, shall pay the purchase money, the marshal shall deliver to him the property, and if desired shall give him a bill of sale containing an acknowledgment of the payment. In all other sales of personal property the marshal shall give the purchaser a bill of sale with the like acknowledgment.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 294.

Sec. 282. **Execution on dormant judgment.** Whenever after the entry of judgment a period of five years shall elapse without an execution being issued on such judgment, thereafter an execution shall not issue except as in this section provided:

First. The party in whose favor a judgment is given shall file a motion with the clerk of the court where the judgment is entered for leave to issue an execution. The motion shall state the names of the parties to the judgment, the date of its entry, and the amount claimed to be due thereon, or the particular property of which the possession was thereby adjudged to such party remaining undelivered. The motion shall be subscribed and verified in like manner as a complaint in an action;

Second. At any time after filing such motion the party may cause a summons to be served on the judgment debtor in like manner and with like effect as in an action. In case such judgment debtor be dead, the summons may be served upon his representative by publication as in the case of a nonresident, or by actual service of the summons;

Third. The summons shall be substantially the same as in an action, but instead of a notice therein required it shall state the amount claimed or the property sought to be recovered, in the manner prescribed in subdivision one of this section.

Fourth. The judgment debtor, or, in case of his death, his representatives, may file an answer to such motion within the time allowed to answer a complaint in an action, alleging any defense to such motion which may exist. If no answer be filed within the time prescribed, the motion shall be allowed, of course. The moving party may demur or reply to the answer. The party opposed to the motion may demur to the same or to the reply. The pleading shall be subscribed and verified and the proceedings conducted as in an action;

Fifth. The word "representatives" in this section shall be deemed to include any or all of the persons mentioned in subdivision two of section two hundred and sixty-seven in whose possession property of the judgment debtors may be which is liable to be taken and sold or delivered in satisfaction of the execution and not otherwise;

Sixth. The order shall specify the amount for which execution is to issue, or the particular property possession of which is to be delivered; it shall be entered in the journal and docketed as a judgment, and a roll thereafter prepared and filed, or a final record made of the proceedings, as the case may be, in the same manner as a judgment.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 295; Murch v. Moore, 2 Oreg., 189; Strong v. Barhhart, 5 id., 496; Ladd v. Higler, id., 296; Pursell v. Deal, 16 id., 298; Beekman v. Hamlin, 19 id., 383; Eddy v. Coldwell, 23 id., 163; Beekman v. Hamlin, 23 id., 313.

Sec. 283. **Confirmation of sale.** Whenever real property is sold on execution, the provisions of this section shall apply to the subsequent proceedings.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 296.

First. The plaintiff in the writ of execution shall be entitled, on motion therefor, to have an order confirming the sale at the term next following the return of the execution, or if it be returned in term time, then at such term, unless the judgment debtor, or in case of his death, his representative, shall file with the clerk ten days before such term, or if the writ be returned in term time, then five days after the return thereof, his objections thereto.

Second. If such objections be filed, the court shall, notwithstanding, allow the order confirming the sale, unless on the hearing of the motion it shall satisfactorily appear that there were substantial irregularities in the proceedings concerning the sale, to the probable loss or injury of the party;

objecting. In the latter case, the court shall disallow the motion, and direct that the property be resold, in whole or in part, as the case may be, as upon an execution received of that date.

Third. Upon the return of the execution the marshal shall pay the proceeds of the sale to the clerk, who shall then apply the same, or so much thereof as may be necessary, in satisfaction of the judgment. If an order of resale be afterwards made, and the property sell for a greater amount to any person other than the former purchaser, the clerk shall first repay to such purchaser the amount of his bid out of the proceeds of the latter sale.

Fourth. Upon a resale the bid of the purchaser at the former sale shall be deemed to be renewed and continue in force, and no bid shall be taken except for a greater amount. If the motion to confirm be not heard and decided at the term at which it is made, it may be continued and heard and determined before the judge, or at any term thereafter. An order confirming a sale shall be a conclusive determination of the regularity of the proceedings concerning such sale, as to all persons, in any other action or proceeding whatever.

Fifth. If, after the satisfaction of the judgment, there be any proceeds of the sale remaining, the clerk shall pay such proceeds to the judgment debtor, or his representative, as the case may be, at any time before the order is made, upon the motion to confirm the sale, provided such party file with the clerk a waiver of all objections made or to be made to the proceedings concerning the sale; but if the sale be confirmed, such proceeds shall be paid to such party of course, otherwise they shall remain in the custody of the clerk until the sale of the property has been disposed of.

Miller v. Bank of British Columbia, 2 Oreg., 291; Miller v. Oreg. C. Mfg. Co., 3 id., 27; Dolph v. Barney, 5 id., 191; Wright v. Young, 6 id., 87; McRae v. Daviner, 8 id., 63; Trullenger v. Kofoed, id., 436; Dell v. Estes, 10 id., 359; Butler v. Smith, 20 id., 130.

Sec. 284. **Eviction of purchaser.** If the purchaser of real property sold on execution, or his successor in interest, be evicted therefrom in consequence of the reversal of the judgment, he may recover the price paid, with legal interest and the costs and disbursements of the action by which he was evicted, from the plaintiff in the writ of execution.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 297.

Sec. 285. **Contribution among joint judgment debtors.** When property liable to an execution against several persons is sold thereon, and more than a due proportion of the judgment is levied upon the property of one of them, or one of them pays without a sale more than his proportion, he may compel contributions from the others; and when a judgment is against several, and is upon an obligation or contract of one of them as security for another, and the surety pays the amount, or any part thereof, either by sale of his property or before sale, he may compel repayment from the principal. In such cases the person so paying or contributing shall be entitled to the benefit of the judgment to enforce contribution or repayment, if within thirty days after his payment he file with the clerk of the court where the judgment was rendered notice of his payment and claim to contribution or repayment; upon filing such notice the clerk shall make an entry thereof in the margin of the docket where the judgment is entered.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 298.

Sec. 286. **Sale of real property; redemption.** Upon a sale of real property, when the estate is less than a leasehold of two years' unexpired term, the sale shall be absolute. In all other cases such property shall be subject to redemption, as hereinafter provided in this chapter. At the time of sale the marshal shall give to the purchaser a certificate of the sale containing—

First. A particular description of the property sold;
Second. The price bid for each distinct lot or parcel;
Third. The whole price paid;
Fourth. When subject to redemption, it shall be so stated.
The matters contained in such certificate shall be substantially stated in the marshal's return of his proceedings upon the writ.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 299.

Sec. 287. **Who may redeem.** Property sold subject to redemption, as provided in the last section, or any part thereof separately sold, may be redeemed by the following persons, or their successors in interest:
First. The judgment debtor, or his successor in interest, in the whole or any part of the property separately sold;
Second. A creditor having a lien by judgment or mortgage on any portion of the property, or any portion of any part thereof, separately sold, subsequent in time to that on which the property was sold.
The persons mentioned in subdivision two of this section, after having redeemed the property, are to be termed redemptioners.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 300; Lauriat v. Stratton, 6 Saw., 339.

Sec. 288. **When lien creditor may redeem.** A lien creditor may redeem the property within sixty days from the date of the order confirming the sale, by paying the amount of the purchase money, with interest, at the rate of eight per centum per annum thereon from the time of sale, together with the amount of any taxes which the purchaser may have paid thereon, and if the purchaser be also a creditor having a lien prior to that of the redemptioner, the amount of such lien with interest.

Laws Oreg., Feb. 25, 1885; Hill's Ann. Laws, s. 301; Doerhoefer v. Farrel, 29 id., 304.

Sec. 289. **Redeeming from redemptioner.** If the property be so redeemed, any other lien creditor may, within sixty days from the last redemption, again redeem it, on paying the sum paid on the last redemption, with interest at the rate of eight per centum per annum thereon from the date of the last preceding redemption in addition, together with any taxes which the last redemptioner may have paid thereon, and, unless his lien be prior to that of such redemptioner, the amount of such lien, with interest. The property may be again, and as often as any lien creditor or redemptioner is disposed, redeemed from the last previous redemptioner, within sixty days from the date of the last redemption, on paying the sum paid on the last previous redemption, with interest at the rate of eight per centum per annum thereon from the date of such previous redemption, together with the amount of any taxes paid thereon by such last redemptioner, and the amount of any liens held by such last redemptioner, prior to his own, with interest.

Laws Oreg., Feb. 25, 1885; Hill's Ann. Laws, s. 302.

Sec. 290. **When judgment debtor may redeem.** The judgment debtor, or his successor in interest, may redeem the property at any time prior to the confirmation of sale, on paying the amount of the purchase money, with interest at the rate of eight per centum per annum thereon from the date of sale, together with the amount of any taxes which the purchaser may have paid thereon after the purchase. But if the judgment debtor do not redeem until after the confirmation of the sale, thereafter he shall redeem within twelve months from such order of confirmation, and not otherwise.

Laws Oreg., Feb. 25, 1885; Hill's Ann. Laws, s. 303; Lauriat v. Stratton, 6 Saw., 339; Cartwright v. Wheeler, 5 Oreg., 397; Willis v. Miller, 23 Oreg., 352.

Sec. 291. **Conveyance to purchaser or redemptioner.** If redemption be not made as prescribed in this act, or when redemption is made and a period of

sixty days shall have elapsed without any other redemption, the purchaser or the redemptioner, as the case may be, shall be entitled to a conveyance from the marshal. If the judgment debtor redeem at any time before the time for redemption expires, the effect of the sale shall terminate and he shall be restored to his estate.

Laws Oreg., Feb. 25, 1885; Hill's Ann. Laws, s. 304; Willis v. Miller, 2 Oreg., 352.

Sec. 292. **Mode of proceeding to redeem.** The mode of redeeming shall be as provided in this section.

The person seeking to redeem may redeem by paying to the marshal the sum required. The marshal shall give the person redeeming a certificate, as in case of sale on execution, adding therein the sum paid on redemption, from whom redeemed, and the date thereof, and shall at once give notice of such redemption to the party from whom redeemed. A party seeking to redeem shall submit to the marshal the evidence of his right thereto, as follows:

First. If he be a lien creditor, a copy of the docket of the judgment under which he claims the right to redeem, certified by the clerk of the court where such judgment is docketed, or if he seek to redeem upon a mortgage, the certificate of the record thereof.

Second. A copy of any assignment necessary to establish his claim, verified by the affidavit of himself or agent; an affidavit by himself or agent showing the amount then actually due on the judgment or mortgage.

Third. If the redemptioner or purchaser have a lien prior to that of the lien creditor seeking to redeem, such redemptioner or purchaser shall submit to the marshal the like evidence thereof and of the amount due thereon, or the same may be disregarded.

When two or more persons apply to the marshal to redeem at the same time, he shall allow the person having the prior lien to redeem first, and so on. The marshal shall immediately pay the money over to the person from whom the property is redeemed, if he attend at the redemption, or if not, at any time thereafter when demanded. Where a marshal shall wrongfully refuse to allow any person to redeem, his right thereto shall not be prejudiced thereby, and upon the submission of the evidence and the tender of the money to the marshal as herein provided, he may be required by order of the court or judge thereof to allow such redemption.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 305.

Sec. 293. **Court may restrain waste.** Until the expiration of the time allowed for redemption, the court or judge thereof may restrain the commission of waste on the property by order granted with or without notice, on the application of the purchaser or judgment creditor; but it shall not be deemed waste for the person in possession of the property at the time of sale or entitled to possession afterwards during the period allowed for redemption to continue to use it in the same manner in which it was previously used, or to use it in the ordinary course of husbandry, or to make the necessary repairs to buildings thereon, or to use wood or timber on the property therefor, or for the repair of fences, or for fuel in his family while he occupies the property.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 306.

Sec. 294. **Who entitled to possession.** The purchaser from the day of sale until a resale or a redemption, and a redemptioner from the day of his redemption until another redemption, shall be entitled to the possession of the property purchased or redeemed, unless the same be in the possession of a tenant holding under an unexpired lease, and in such case shall be entitled to

receive from such tenant the rents or the value of the use and occupation thereof during the same period.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 307; Cartwright v. Savage, 5 Oreg., 397; Bank of British Col. v. Harlow, 9 id., 338.

Sec. 295. **Order to examine judgment debtor.** After the issuing of an execution against property, and upon proof by the affidavit of the plaintiff in the writ, or otherwise, to the satisfaction of the court or judge thereof that the judgment debtor has property liable to execution which he refuses to apply towards the satisfaction of the judgment, such court or judge may, by an order, require the judgment debtor to appear and answer under oath concerning the same before such court or judge, or before a referee appointed by such court or judge, at a time and place specified in the order.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 308; Knowles v. Herbert, 11 Oreg., 54, 241; Hughes v. Oreg. Ry. Co., id., 158.

Sec. 296. **Examination of judgment debtor.** On the appearance of the judgment debtor, he may be examined on oath concerning his property. His examination, if required by the plaintiff in the writ, shall be reduced to writing and filed with the clerk by whom the execution was issued. Either party may examine witnesses in his behalf, and if by such examination it appear that the judgment debtor has any property liable to execution the court or judge before whom the proceeding takes place, or to whom the report of the referee is made, shall make an order requiring the judgment debtor to apply the same in satisfaction of the judgment, or that such property be levied on, by execution, in the manner and with the effect as provided in this chapter, or both, as may seem most likely to effect the object of the proceeding.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 309.

Sec. 297. **Restraining order against judgment debtor.** At the time of allowing the order prescribed in section two hundred and ninety-six, or at any time thereafter pending the proceeding, the court or judge may make an order restraining the judgment debtor from selling, transferring, or in any manner disposing of any of his property liable to execution pending the proceeding. For disobeying any order or requirement authorized by sections two hundred and ninety-five, two hundred and ninety-six, and two hundred and ninety-seven, the judgment debtor may be punished as for a contempt.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 310.

Sec. 298. **Judgment debtor may be arrested.** Instead of the order requiring the attendance of the judgment debtor, as provided in the last two sections, the court or judge may, upon proof by affidavit of the party, or otherwise to his satisfaction, that there is danger of the debtor leaving the district, or concealing himself therein, and that there is reason to believe he has property which he unjustly refuses to apply to such judgment, issue a warrant requiring the marshal to arrest him and bring him before the court or judge. Upon being brought before the court or judge he may be examined on oath, and if it then appear that there is danger of the debtor leaving the district, and that he has property which he unjustly refused to apply to such judgment, he may be ordered to enter into an undertaking with one or more sureties that he will from time to time attend before the court or judge, as may be directed, and that he will not, during the pendency of the proceedings, dispose of any portion of his property not exempt from execution. In default of entering into such undertaking he may be committed to jail by warrant of the judge.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 311.

Sec. 299. **Order to examine garnishee.** Whenever the marshal, with an execution against the property of the judgment debtor, shall apply to any person or officer mentioned in subdivision three of section one hundred and forty for the purpose of levying on any property therein mentioned, such person or officer shall forthwith give to the marshal a certificate in the manner prescribed in section one hundred and forty-two. If such person or officer refuse to do so, or if the certificate be unsatisfactory to the plaintiff in the writ, he may in like manner have the order prescribed in such section against such person or officer. Thereafter the proceeding upon such order shall be conducted in the manner prescribed from section one hundred and fifty-two to section one hundred and sixty-one, inclusive.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 312; Batcheller v. Richardson, 17 Oreg., 345.

Sec. 300. **Public officers not liable to answer as garnishees.** No public officer shall be liable as garnishee for moneys in his possession as such officer, belonging to or claimed by any judgment debtor.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 314.

CHAPTER THIRTY-TWO.

OF ACTIONS TO RECOVER THE POSSESSION OF REAL PROPERTY.

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Sec. 301. **Who may bring such action and against whom.** Any person who has a legal estate in real property, and a present right to the possession thereof, may recover such possession, with damages for withholding the same, by an action. Such action shall be commenced against the person in the actual possession of the property at the time, or if the property be not in the actual possession of anyone, then against the person acting as the owner thereof.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 316; Goldsmith v. Smith, 10 Saw., 294; Mickey v. Stratton, 5 id., 475; Keith v. Cheeny, 1 Oreg., 285; Humphrey v. Taylor, 5 id., 260; McKay v. Freeman, 6 id., 449; Tilton v. Barrell, 8 Saw., 412; Johnson v. Crookshanks, 21 Oreg., 340; Duffy v. Mix, 24 id., 267; Barrell v. Title G. Co., 27 id., 77; Morton v. Elwart, 29 id., 592.

Sec. 302. **Substitution of landlord in place of tenant.** A defendant who is in actual possession may, for answer, plead that he is in possession only as tenant of another, naming him and his place of residence, and thereupon the landlord, if he apply therefor, shall be made defendant in place of the tenant, and the action shall proceed in all respects as if originally commenced against him. If the landlord do not apply to be made defendant within the day, the tenant is allowed to answer; thereafter he shall not be allowed to, but he shall be made defendant if the plaintiff require it. If the landlord be made defendant on motion of the plaintiff, he shall be required to appear and answer within twenty days from notice of the pendency of the action and the order making him defendant, or such further time as the court or judge thereof may prescribe.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 317; Fitch v. Cornell, 1 Saw., 156.

Sec. 303. **Complaint.** The plaintiff in his complaint shall set forth the nature of his estate in the property, whether it be in fee, for life, or for a term of years, and for whose life, or the duration of such term, and that he is entitled to the possession thereof, and that the defendant wrongfully withholds the same from him to his damage in such sum as may be therein claimed. The property shall be described with such certainty as to enable the possession thereof to be delivered if a recovery be had.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 318; Thompson v. Wolf, 6 Oreg., 308; Pease v. Hannah, 3 id., 301; McKay v. Freeman, 6 id., 449; Richerds v. Crews, 16 id., 58; Bingham v. Kern, 18 id., 201; Johnson v. Crookshanks, 21 id., 340; Berrell v. Title G. Co., 27 id., 77.

Sec. 304. **What defendant may give in evidence.** The defendant shall not be allowed to give in evidence any estate in himself, or another in the property, or any license or right to the possession thereof, unless the same be pleaded in his answer. If so pleaded, the nature and duration of such estate, or license, or right to the possession shall be set forth with the certainty and particularity required in a complaint. If the defendant does not defend for the whole of the property he shall specify for what particular part he does defend. In an action against a tenant the judgment shall be conclusive against the landlord who has been made defendant in place of the tenant to the same extent as if the action had been originally commenced against him.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 319; Fitch v. Cornell, 1 Saw., 156; Stark v. Star, id., 15; Wythe v. Myers, 3 id., 595; Phillippi v. Thompson, 8 Oreg., 428; Newby v. Rowland, 11 id., 133; Hemenway v. Francis, 20 id., 457.

Sec. 305. **Verdict of the jury.** The jury by their verdist shall find as follows:

First. If the verdict be for the plaintiff, that he is entitled to the possession of the property described in the complaint, or some part thereof, or some undivided share or interest in either, and the nature and duration of his estate in such property, part thereof, or undivided share or interest in either, as the case may be.

Second. If the verdict be for the defendant, that the plaintiff is not entitled to the possession of the property described in the complaint, or to such part thereof as the defendant defends for, and the estate in such property or part thereof, or license or right to the possession of either, established on the trial by the defendant, if any; in effect as the same required to be pleaded.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 320; Goldsmith v. Smith, 10 Saw., 294; Fitch v. Cornell, 1 Saw., 157.

Sec. 306. **Recovery of damages set-off of improvements, etc.** The plaintiff shall only be entitled to recover damages for withholding the property for the term of six years next preceding the commencement of the action, and for any

period that may elapse from such commencement to the time of giving a verdict therein, exclusive of the use of permanent improvements made by the defendant. When permanent improvements have been made upon the property by the defendant, or those under whom he claims, holding under color of title adversely to the claim of plaintiff, in good faith, the value thereof at the time of trial not exceeding such damages shall be allowed as a set-off.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 321; Wythe v. Meyers, 3 Saw., 595; Stark v. Stark, 7 Oreg., 500; Hatcher v. Briggs, 6 id., 31; Fitch v. Cornell, supra; Neff v. Penoyer, 3 Oreg., 496.

Sec. 307. **Verdict when right of possession expires.** If the right of the plaintiff to the possession of the property expire after the commencement of the action, and before the trial, the verdict shall be given according to the fact, and judgment shall be given only for the damages.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 322.

Sec. 308. **Order to make survey.** The court or judge thereof, on motion, and after notice to the adverse party, may, for cause shown, grant an order allowing the party applying therefor to enter upon the property in controversy, and make survey and admeasurement thereof, for the purposes of the action.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 323.

Sec. 309. **Same subject.** The order shall describe the property, and a copy thereof shall be served upon the defendant, and thereupon the party may enter upon the property and make such survey and admeasurement, but if any unnecessary injury be done to the premises he shall be liable therefor.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 324.

Sec. 310. **Alienation by person in possession.** An action for the recovery of the possession of real property against a person in possession can not be prejudiced by any alienation made by such person, either before or after the commencement of the action; but if such alienation be made after the commencement of the action, and the defendant does not satisfy the judgment recovered for damages for withholding the possession, such damages may be recovered by action against the purchaser.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 325.

Sec. 311. **Action by mortgagor against mortgagee.** A mortgage of real property shall not be deemed a conveyance so as to enable the owner of the mortgage to recover possession of the real property without a foreclosure and sale according to law, and a judgment thereon.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 326; Roberts v. Sutherlin, 4 Oreg., 219; Cook v. Cooper, 18 id., 147.

Sec. 312. **Action by cotenant for dower.** In an action for the recovery of dower before admeasurement, or by a tenant in common of real property against a cotenant, the plaintiff shall show, in addition to the evidence of his right of possession, that the defendant either denied the plaintiff's right or did some act amounting to such denial.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 327; Goldsmith v. Smith, 10 Saw., 294.

Sec. 313. **Action by lessee on failure to pay.** When in case of a lease of real property and the failure of tenant to pay rent, the landlord has a subsisting right to re-enter for such a failure, and may bring an action to recover the possession of such property, and such action is equivalent to a demand of the rent and a re-entry upon the property. But if, at any time before judgment in such action, the lessee or his successor in interest as to the whole or a part of the property pay to the plaintiff or bring into court the amount of rent

then in arrear, with interest, and the costs of the action, and perform the other covenants or agreements on the part of the lessee, he shall be entitled to continue in the possession according to the terms of the lease.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 328.

Sec. 314. **Conclusiveness of judgment.** In an action to recover the possession of real property the judgment therein shall be conclusive as to the estate in such property and the right to the possession thereof, so far as the same is thereby determined, upon the party against whom the same is given and against all persons claiming from, through, or under such party after the commencement of such action, except as in this section provided. When service of the summons is made by publication and judgment is given for want of answer, at any time within two years from the entry thereof, the defendant or his successor in interest as to the whole or any part of the property shall, upon application to the court or judge thereof, be entitled to an order vacating the judgment and granting him a new trial upon the payment of the costs of the action.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 329; Hill v. Cooper, 8 Oreg., 254; Barrell v. Title G. Co., 27 id., 77.

Sec. 315. **Possession not affected by order allowing new trial.** If the plaintiff has taken possession of the property before the judgment is set aside and a new trial granted, as provided in the section last preceding, such possession shall not be thereby affected in any way, and if judgment be given for the defendant in the new trial he shall be entitled to restitution by execution in the same manner as if he were plaintiff.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 330.

Sec. 316. **Admeasurement of dower after judgment.** In an action to recover the possession of real property by a tenant in dower or his successor in interest, if such estate in dower has not been admeasured before the commencement of the action, the plaintiff shall not have execution to deliver the possession thereof until the same be admeasured, as follows:

First. At any time after the entry of judgment in favor of the plaintiff, he may, upon notice to the adverse party, move the court for the appointment of referees to admeasure the dower out of the real property of which the possession is recovered by the action. The court shall allow such motion unless it appear probable on the hearing that a partition of such property can not be made without prejudice to the interests of the other owners. In the latter case the court shall disallow the motion, and thereafter the plaintiff shall only proceed for partition or sale of such real property as provided in the chapter of this code entitled "Of Actions for the Partition of Real Property;"

Second. If the court allow the motion, thereafter the proceedings shall be conducted as provided in such chapter. At any time after the confirmation of the report of the referees the plaintiff may have execution for the delivery of the possession of the property according to the admeasurement thereof, and for the damages recovered, if any, for withholding the same, if such damages remain unsatisfied;

Third. If the motion for admeasurement be made at the term at which judgment was given, the notice thereof shall be served on the adverse party at such time as the court by general rule or special order may prescribe.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 331.

CHAPTER THIRTY-THREE.

OF ACTIONS FOR NUISANCE, WASTE, AND TRESPASS ON REAL PROPERTY.

Sec.
317. Private nuisance and action therefor; when warrant allowed to abate it.
318. How warrant issued, and mode of proceeding under.
319. When defendant may have stay of warrant.
320. Sureties in undertaking, when to justify.
321. Action for waste, and judgment therein.
322. Actions for trespass in particular cases, and of judgment therein.
323. Same subject.

Sec. 317. **Action for damages for and abatement of private nuisance.** Any person whose property is affected by a private nuisance, or whose personal enjoyment thereof is in like manner thereby affected, may maintain an action for damages therefor. If judgment be given for the plaintiff in such action, he may, in addition to the execution to enforce the same, on motion, have an order allowing a warrant to issue to the marshal to abate such nuisance. Such motion must be made at the term at which judgment is given, and shall be allowed of course, unless it appear on the hearing that the nuisance has ceased, or that such remedy is inadequate to abate or prevent the continuance of the nuisance, in which latter case the plaintiff may proceed to have the defendant enjoined.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 333; Roseberg v. Abraham, 8 Oreg., 509; Trullenger v. Marsh, 6 id., 356; Ankeny v. Fairview M. Co., 10 id., 300; Fleischner v. Citizen R. Co., 25 id., 119.

Sec. 318. **Warrant, mode of proceeding under.** If the order be made, the clerk shall thereafter, at any time within six months, when requested by the plaintiff, issue such warrant directed to the marshal, requiring him forthwith to abate the nuisance at the expense of the defendant, and return the warrant as soon thereafter as may be, with his proceedings endorsed thereon. The expense of abating the nuisance may be levied by the marshal on the property of the defendant, and in this respect the warrant is to be deemed an execution against property.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 334.

Sec. 319. **When defendant may have stay.** At any time before the order is made, or the warrant issues, the defendant may, on motion to the court or judge thereof, have an order to stay the issue of such warrant for such period as may be necessary, not exceeding six months, and to allow the defendant to abate the nuisance himself, upon his giving an undertaking to the plaintiff in a sufficient amount with one or more sureties, to the satisfaction of the court or judge thereof, that he will abate it within the time and in the manner specified in such order.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 335.

Sec. 320. **Justification of sureties in undertaking.** If the plaintiff is not notified of the time and place of the application for the order provided for in section three hundred and nineteen, the sureties therein provided for shall justify as bail upon arrest, otherwise such justification may be omitted, unless the plaintiff require it. If such order be made and undertaking given, and the defendant fails to abate such nuisance within the time specified in said order, thereafter, at any time within six months, the warrant for the abatement of the nuisance may issue as if the same had not been stayed.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 336.

Sec. 321. **Waste, actions for.** If a guardian, tenant in severalty or in common for life or for years, of real property, commit waste thereon, any person injured thereby may maintain an action for damages therefor against such guardian or tenant, in which action there may be judgment for treble damages, forfeiture of the estate of the party committing or permitting the waste, and of eviction from the property. But judgment of forfeiture and eviction shall only be given in favor of the person entitled to the reversion against the tenant in possession when the injury to the estate in reversion is determined in the action to be equal to the value of the tenant's estate or unexpired term, or to have been done or suffered in malice.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 337.

Sec. 322. **Trespass for cutting trees, etc.** Whenever any person shall cut down, girdle, or otherwise injure, or carry off any tree, timber, or shrub on the land of another person, or on the street or highway in front of any person's house, village, town, or city lot, or cultivated grounds, or on the commons or public grounds of any village, town, or city, or on the street or highway in front thereof, without lawful authority, in an action by such person, village, town, or city against the person committing such trespasses, or any of them, if judgment be given for the plaintiff it shall be given for treble the amount of damages claimed or assessed therefor, as the case may be.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 338; Neff v. Penoyer, 3 Saw., 495; Lowenberg v. Rosenthal, 18 Oreg., 186; O. & C. R. R. Co. v. Jackson, 21 id., 362.

Sec. 323. **Same. Intent.** If upon the trial of such action it shall appear that the trespass was casual or involuntary, or that the defendant had probable cause to believe that the land on which such trespass was committed was his own, or that of the person in whose service or by whose direction the act was done, or that such tree or timber was taken from uninclosed woodland for the purpose of repairing any public highway or bridge upon the land or adjoining it, judgment shall only be given for single damages.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 339.

CHAPTER THIRTY-FOUR.

ACTIONS ON OFFICIAL UNDERTAKINGS, AND FOR FINES AND FORFEITURES.

Sec.
324. Official undertakings, to whom deemed a security.
325. Who may maintain action thereon.
326. When leave must be obtained before action can be commenced.
327. Judgment no bar to action for another delinquincy.
328. Amount of judgment.
Sec.
329. Who may maintain action for fines and forfeitures.
330. Actions for penalties not to exceed certain amount.
331. Judgment by collusion between plaintiff and defendant.
332. Disposition of fines and forfeitures.

Sec. 324. **Official bonds, to whom deemed security.** The official undertaking or other security of a public officer to any county, city, town, or other municipal or public corporation of like character therein, shall be deemed a security to the United States, or to such city, town, or other municipal or public corporation as the case may be, and also to all persons severally for the official delinquency against which it is intended to provide.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 340; Howe v. Taylor, 6 Oreg., 284; Hume v. Kelly, 28 id., 398; Brower L. Co. v. Miller, id., 573.

Sec. 325. **Who may sue thereon.** When a public officer, by official misconduct or neglect of duty, shall forfeit his official undertaking or other security, or render his sureties therein liable upon such undertaking or other security, any person injured by such misconduct or neglect, or who is by law entitled to the benefit of the security, may maintain an action thereon in his own name, against the officer and his sureties, to recover the amount to which he may by reason thereof be entitled.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 341; Haversham v. Sears, 11 Oreg., 431; Moore v. Floyd, id., 101; Hume v. Kelly, 28 id., 398; Brower L. Co. v. Miller, supra.

Sec. 326. **Leave to commence action.** Before such action can be commenced by a plaintiff other than the United States, or the municipal or public corporation named in the undertaking or other security, leave shall be obtained of the court or judge thereof where the action is triable. Such leave shall be granted upon the production of a certified copy of the undertaking or other security, and an affidavit of the plaintiff, or some person in his behalf, showing the delinquency. But if the matters set forth in the affidavit be such that, if true, the party applying would clearly not be entitled to recover in the action, the leave shall not be granted. If it does not appear from the complaint that the leave herein provided for has been granted, the defendant on motion shall be entitled to judgment of nonsuit; if it does, the defendant may controvert the allegation, and if the issue be found in his favor, judgment may be given accordingly.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 342; Crook Co. v. Bushnell, 15 Oreg., 171; Hume v. Kelly, supra; Brower L. Co. v. Miller, supra.

Sec. 327. **Judgment no bar to action for further delinquency.** A judgment in favor of a party for one delinquency shall not preclude the same or another party from maintaining another action on the same undertaking, or other security, for another delinquency.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 343.

Sec. 328. **Amount of judgment.** In an action upon an official undertaking or other security, if judgment has already been recovered against the surety therein, other than by confession, equal in the aggregate to the penalty or any part thereof of such undertaking or other security, and if such recovery be established on the trial, judgment shall not be given against such security for an amount exceeding such penalty, or such portion thereof as is not already recovered against him.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 344.

Sec. 329. **Actions for fine and forfeitures.** Fines and forfeitures may be recovered by an action in the name of the officer or person to whom they are by law given, or in the name of the officer or person who by law is authorized to prosecute for them.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 345; Hannah v. Wells, 4 Oreg., 249.

Sec. 330. **Amount of recovery.** When an action shall be commenced for a penalty which by law is not to exceed a certain amount, the action may be commenced for that amount, and if judgment be given for the plaintiff it may be for such amount or less, in the discretion of the court, in proportion to the offense.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 346.

Sec. 331. **Judgment by collusion between plaintiff and defendant.** A recovery of a judgment for a penalty or forfeiture by collusion between the plaintiff and defendant, with intent to save the defendant, wholly or partially, from the consequences contemplated by law, in case where the penalty or

forfeiture is given, wholly or partly, to the person who prosecutes, shall not bar the recovery of the same by another person.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 347; Grant Co. v. Lake Co., 17 Oreg., 458; Templeton v. Linn Co., 22 id., 315.

Sec. 332. **Disposition of fines and forfeitures.** Fines and forfeitures not specially granted or otherwise appropriated by law, when recovered, shall be paid to the clerk of the district court. Whenever, by the provisions of law, any property, real or personal, shall be forfeited to the United States, or to any officer for its use, the action for the recovery of such property may be commenced wherever the defendant may be found, or wherever such property may be.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 348.

CHAPTER THIRTY-FIVE.

ACTIONS BY AND AGAINST PUBLIC CORPORATIONS AND OFFICERS.

Sec.
333. How actions may be maintained by public corporations, and for what causes.
334. Actions against public corporations, and what causes.
335. How pleadings of public corporations verified.
336. How judgment against public corporation satisfied.

Sec. 333. **Actions by public corporations.** An action may be maintained by any incorporated town, school district, or other public corporation of like character in the district in its corporate name, and upon a cause of action accruing to it in its corporate character, and not otherwise, in either of the following cases:

First. Upon a contract made with such public corporation;

Second. Upon a liability prescribed by law in favor of such public corporation;

Third. To recover a penalty or forfeiture given to such public corporation;

Fourth. To recover damages for an injury to the corporate rights or property of such public corporation.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 349.

Sec. 334. **Actions against public corporations.** An action may be maintained against any of the public corporations in the district mentioned in the last preceding section in its corporate character, and within the scope of its authority, or for an injury to the rights of the plaintiff arising from some act or omission of such public corporation.

Laws Oreg., Feb. 21, 1887; Hill's Ann. Laws, s. 350; Sheridan v. Salem, 14 Oreg., 328; Grant Co. v. Lake Co., 17 Id., 458; Templeton v. Linn Co., 22 id., 315; St. v. Baker Co., 24 id., 141.

Sec. 335. **How pleadings verified.** In such actions the pleadings of the public corporation shall be verified by the chief officer representing it in its corporate capacity, or by such other officer, agent, or attorney as he may designate, in the same manner as if such officer were a defendant in the action.

Laws Oreg. Oct. 11, 1862; Hill's Ann. Laws, s. 351.

Sec. 336. **How judgment satisfied.** If judgment be given for the recovery of money or damages against a public corporation, no execution shall issue

thereon for the collection of such money or damages, but such judgment in such respect shall be satisfied as follows:

First. The party in whose favor such judgment is given may, at any time thereafter, when an execution might issue on a like judgment against a private person, present a certified transcript of the record thereof to the officer of such public corporation who is authorized to draw orders on the treasurer thereof.

Second. On the presentation of such transcript, such officer shall draw an order on such treasurer for the amount of the judgment in favor of the party for whom the same was given. Thereafter such order shall be presented for payment, and paid, with like effect and in like manner as other orders upon the treasurer of such public corporation.

Third. The certified transcript herein provided for shall not be furnished by the clerk unless at the time an execution might issue on such judgment if the same were against a private person, nor until satisfaction of the judgment in respect to such money or damages be acknowledged as in ordinary cases. The clerk shall include in the transcript a memorandum of such acknowledgment of satisfaction and the entry thereof. Unless the transcript contain such memorandum no order upon the treasurer shall issue thereon.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 352.

CHAPTER THIRTY-SIX.

OF ACTIONS TO AVOID CHARTERS, LETTERS PATENT, AND TO PREVENT THE USURPATION OF AN OFFICE OR FRANCHISE AND TO DETERMINE THE RIGHT THERETO.

Sec.
337. Scire facias and quo warranto abolished.
338. Action against public or private corporation to be commenced on the direction of the governor.
339. Action to annul the existence of corporation.
340. Action for the usurpation of office or franchise.
341. Who to prosecute actions, pleadings by whom verified, how leave granted, and who deemed coplaintiff.
342. Duty of prosecuting attorney as to commencing action.
343. When relator's right may be pleaded and determined in the action.
344. If judgment be given in favor of relator what he may do.
345. Relator after judgment may have action for damages.
346. Actions against several persons claiming office or franchise.
347. Judgment against usurper. Court may fine him.
348. Judgment against corporation.
349. Copy of judgment roll to be filed.
350. How judgment enforced.

Sec. 337. **Scire facias and quo warranto abolished.** The writ of scire facias, the writ of quo warranto, and proceedings by information in the nature of quo warranto are abolished, and the remedies heretofore obtainable under those forms may be obtained by an action in the mode prescribed in this chapter.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 354; St. v. Douglass Co. Road Co., 10 Oreg., 199; Wilson v. Shively, id., 273.

Sec. 338. **Action against corporation, how commenced.** An action may be maintained in the name of the United States, whenever the governor shall so direct, against a corporation either public or private, for the purpose of avoid-

ing the act of incorporation, or the act renewing or modifying its corporate existence, on the ground that such act or either of them was procured upon some fraudulent suggestion or concealment of a material fact by the persons incorporated, or some of them, or with their knowledge and consent; or for annulling the existence of such corporation, when the same has been formed under any general law operating in this district therefor, on the ground that such incorporation, or any renewal or modification thereof, was procured in like manner.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 355.

Sec. 339. **Action to annul existence of corporation.** An action may be maintained in the name of the United States against a corporation other than a public one on leave granted by the court or judge thereof where the action is triable, for the purpose of avoiding the charter or annulling the existence of such corporation, whenever it shall—

First. Offend against any of the provisions of the acts, or either of them, creating, renewing, or modifying such corporation or the provisions of any general law under which it became incorporated; or,

Second. Violate the provisions of any law by which such corporation forfeits its charter by abuse of its powers; or,

Third. Whenever it has forfeited its privileges or franchises by failure to exercise for a period of one year its powers; or,

Fourth. Whenever it has done or omitted any act which amounts to a surrender of its corporate rights, privileges, and franchises; or,

Fifth. Whenever it exercises a franchise or privilege not conferred upon it by law; or,

Sixth. Whenever any such corporation or association of persons shall combine for the purpose of forming a trust or agreement to prevent competition or to control the price, production or sale of any goods, products, or merchandise.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 356; State v. Oreg. & C. R. R. Co., 2 Oreg., 255; State v. Douglass Co. Road Co., 10 id., 201.

Sec. 340. **Actions for usurpation of office or franchise.** An action may be maintained in the name of the United States upon the information of the United States attorney or upon the relation of a private party against the person offending in the following cases:

First. When any person shall usurp, intrude into, or unlawfully hold or exercise any public office, civil or military, or any franchise within the district, or any office in a corporation, either public or private, created or formed by or under the authority of the district; or,

Second. When any public officer has done or suffered an act which, by the provisions of law, makes a forfeiture of his office; or,

Third. When any association or number of persons act within the district as a corporation without being duly incorporated.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 357; State v. McKinon, 8 Oreg., 493; Robertson v. Groves, 4 id., 214; State v. Church, 5 id., 375; Everding v. McGinn, 23 id., 15; St. v. Steven, 29 id., 465.

Sec. 341. **Who to prosecute action, verification, etc.** The actions provided for in this chapter shall be commenced and prosecuted by the United States attorney. When the action is upon the relation of a private party, as allowed in section three hundred and forty, the pleadings on behalf of the district shall be verified by such relator as if he were the plaintiff in the action, or otherwise as provided in section seventy-one; in all other cases such pleading shall be verified by the attorney in like manner, or otherwise as provided in such section. When an action can only be commenced by leave as provided in

section three hundred and thirty-nine, such leave shall be granted when it appears by affidavit that the acts or omissions in such section specified have been done or suffered by such corporation. When an action is commenced on the information of a private person, as allowed in section three hundred and forty, having an interest in the question, such party, for all the purposes of the action, and as to the effect of any judgment that may be given therein, shall be deemed a coplaintiff.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 359.

Sec 342. **Duty of United States attorney.** When directed by the governor, as prescribed in section three hundred and thirty-eight, it shall be the duty of the prosecuting attorney to commence the action therein provided for accordingly. In all other actions provided for in this chapter it shall be his duty to commence such action upon leave given where leave is required in every case of public interest, whenever he has reason to believe that a cause of action exists and can be proven, and also for like reasons in every case of private interest only in which satisfactory security is given to the district to indemnify it against the costs and expenses that may be incurred thereby.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 360.

Sec. 343. **Relator's right may be pleaded and determined.** Whenever an action is brought against a person for any of the causes specified in subdivision one of section three hundred and forty, the United States attorney, in addition to the statement of the cause of action, may also separately set forth in the complaint the name of the person rightfully entitled to the office or franchise, with a statement of the facts constituting his right thereto. In such case, judgment may be given upon the right of the defendant, and also upon the right of the person so alleged to be entitled, or only upon the right of the defendant, as justice may require.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 361.

Sec. 344. **Judgment in favor of relator.** If judgment be given upon the right of the person so alleged to be entitled, and the same be in favor of such person, he shall be entitled to the possession and enjoyment of such franchise, or to take upon himself the execution of such office, after qualifying himself therefor as required by law, and to demand and receive the possession of all the books, papers, and property of whatever nature belonging thereto.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 362.

Sec. 345. **Relator may have action for damages.** If judgment be given upon the right and in favor of the person so alleged to be entitled, he may afterwards maintain an action to recover the damages which he may have sustained by reason of the premises. In such action the defendant may be arrested and held to bail in the same manner and with the like effect as in other actions where the defendant is subject to arrest.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 363.

Sec. 346. **Actions against several claiming office or franchise.** Several persons may be joined as defendants in an action for the causes specified in subdivision one of section three hundred and forty, and in such action their respective rights to such office or franchise may be determined.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 364.

Sec. 347. **Judgment against usurper.** When a defendant, whether a natural person or a corporation, against whom an action has been commenced for any of the causes specified in subdivision one of section three hundred and forty is determined to be guilty of usurping, or intruding into, or unlawfully holding or exercising any office or franchise, judgment shall be given that such

defendant be excluded therefrom. The court may also in its discretion impose a fine upon the defendant not exceeding two thousand dollars.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 365.

Sec. 348. **Judgment against corporation.** If it be determined that a corporation against which an action has been commenced pursuant to this chapter has forfeited its corporate rights, privileges, and franchises, judgment shall be given that such corporation be excluded therefrom, and that the corporation be dissolved.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 366.

Sec. 349. **Copy of judgment roll to be filed.** If judgment be given against a corporation the effect of which is that such corporation ceases to exist, or whereby any letters patent are determined to be vacated or annulled, it shall be the duty of the United States attorney to cause a copy of the judgment roll to be filed with the officer issuing the certificate of corporation or the letters patent to such corporation.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 367.

Sec. 350. **How judgment enforced.** A judgment given in any action provided for in this chapter, in respect to costs and disbursements, may be enforced by execution as a judgment which requires the payment of money, and in all other respects obedience thereto may be enforced by attachment of the body of the defendant, or, if the defendant be a corporation, the body of any or all of the officers or members of such corporation refusing or neglecting obedience thereto.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 368.

CHAPTER THIRTY-SEVEN.

OF ACTIONS BY AND AGAINST EXECUTORS OR ADMINISTRATORS.

Sec.
351. What causes of action do not survive.
352. What causes of action do survive.
353. When a death ensues from an injury.
354. Representatives regarded as one person.
355. When judgment for want of answer is evidence of assets.
356. Effect of inventory as evidence, and how it may be contradicted or avoided.
357. Executor of his own wrong not liable as such.
358. When action may be commenced against executor or administrator.
359. Claim must be presented before action can be commenced.
360. When provisional remedies allowed against executors or administrators.

Sec. 351. **What causes of action do not survive.** A cause of action arising out of an injury to the person dies with the person of either party, except as provided in section three hundred and fifty-three; but the provisions of this chapter shall not be construed so as to abate the action mentioned in section thirty-six, or to defeat or prejudice the right of action given by section thirty-one.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 369.

Sec. 352. **What causes of action survive.** All other causes of action by one person against another, whether arising on contract or otherwise, survive to the personal representatives of the former and against the personal repre-

sentatives of the latter. When the cause of action survives, as herein provided, the executors or administrators may maintain an action thereon against the party against whom the cause of action accrued or, after his death, against his personal representatives.

Hill's Ann. Laws, s. 370.

Sec. 353. **When death ensues from injury.** When the death of a person is caused by the wrongful act or omission of another, the personal representatives of the former may maintain an action therefor against the latter, if the former might have maintained an action, had he lived, against the latter for an injury done by the same act or omission. Such action shall be commenced within two years after the death, and the damages therein shall not exceed ten thousand dollars, and the amount recovered, if any, shall be exclusively for the benefit of the decedent's husband or wife and children when he or she leaves a husband, wife, or children, him or her surviving; and when any sum is collected it must be distributed by the plaintiff as if it were unbequeathed assets left in his hands, after payment of all debts and expenses of administration, and when he or she leaves no husband, wife, or children, him or her surviving, the amount recovered shall be administered as other personal property of the deceased person; but the plaintiff may deduct therefrom the expenses of the action, to be allowed by the proper court upon notice, to be given in such manner and to such persons as the court deems proper.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 371; Putnam v. S. P. Co., 21 Oreg., 231; Carlson v. Oreg. S. L. R. Co., id., 453; Miller v. Southern P. Co., 20 Oreg., 389.

Sec. 354. **Several representatives regarded as one person.** In an action against several executors or administrators, they shall all be considered as one person representing their testator or intestate, and judgment may be given and execution issued against all of them who are defendants in the action, although the summons be served only on part of them, in the same manner and with the like effect as if served on all, except as provided in the next section.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 372.

Sec. 355. **Judgment on failure to answer as evidence of assets.** When a judgment is given against an executor or administrator for want of an answer, such judgment is not to be deemed evidence of assets in his hands unless it appear that the complaint alleged assets and that the summons was served upon him.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 373.

Sec. 356. **Inventory as evidence.** In an action against executors or administrators, in which the fact of their having administered the estate of their testator or intestate or any part thereof is put in issue, and the inventory of the property of the deceased returned by them is given in evidence, the same may be contradicted or avoided by evidence—

First. That any property has been omitted in such inventory, or was not returned therein at its full value, or that since the return thereof such property has increased in value;

Second. That such property has perished or been lost without the fault of such executors or administrators, or that it has been fairly and duly sold by them at a less price than the value so returned, or that since the return of the inventory such property has deteriorated in value. In such action the defendants can not be charged for any things in action specified in their inventory unless it appear that they have been collected, or with due diligence might have been.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 374.

Sec. 357. **Executor of his own wrong.** No person is liable to an action as executor of his own wrong for having taken, received, or interfered with the property of a deceased person, but is responsible to the executors or administrators of such deceased person for the value of all property so taken or received and for all injury caused by his interference with the estate of the deceased.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 375; Rutherford v. Thompson, 14 Oreg., 236.

Sec. 358. **Action against representatives, when commenced.** An action may be commenced against an executor or administrator at any time after the expiration of twelve months from the granting of letters testamentary or of administration and until the final settlement of the estate and discharge of such executor or administrator from the trust, and not otherwise.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 377; Teal v. Winston, 22 Oreg., 90, 491; Blaskower v. Steele, 23 id., 106.

Sec. 359. **Claim must be presented to executor or administrator.** Such action shall not be commenced until the claim of the plaintiff has been duly presented to such executor or administrator, and by him disallowed. If such claim is presented after the expiration of the period of six months, mentioned in sections eight hundred and twenty and eight hundred and twenty-one, the executor or administrator in an action therefor shall only be liable to the extent of the assets in his hands at the time the summons is served upon him.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 378; Blaskower v. Steele, 23, id., 106.

Sec. 360. **Provisional remedies against executors or administrators.** In an action against an executor or administrator, as such, the provisional remedies of arrest and attachment shall not be allowed on account of the acts of his testator or intestate; but for his own acts as such executor or administrator such remedies shall be allowed for the same causes and in like manner and with like effect as in actions generally.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 379.

CHAPTER THIRTY-EIGHT.

GENERAL PROVISIONS RELATING TO ACTIONS OF AN EQUITABLE NATURE.

Sec.
361. Limitation of actions.
362. In whose name an action to be prosecuted.
363. Plaintiffs and defendants, who may be.
364. Same subject.
365. Service of the summons.
366. Service of the summons by publication.
367. What objections if not taken by demurrer or answer may be made on the trial.
368. Counterclaim of defendant.
369. What causes of actions may be united.
370. Arrest and bail in actions of equitable nature.

Sec. 361. **Limitation of suit.** An action of an equitable nature shall only be commenced within the time limited to commence an action as provided in chapter two of this title; and an action for the determination of any right or claim to or interest in real property shall be deemed within the limitations provided for actions for the recovery of the possession of real property; but no action shall be maintained to set aside, cancel, annul, or otherwise affect a patent to lands issued by the United States, or to compel any person claiming or hold-

ing under such patent to convey the lands described therein or any portion of them to the plaintiff in such action, or to hold the same in trust for or to the use and benefit of such plaintiff, or on account of any matter, thing, or transaction which was had, done, suffered, or transpired prior to the date of such patent, unless such action is commenced within ten years from the date of such patent. In an action upon a new promise, fraud, or mistake the limitation shall only be deemed to commence from the making of the new promise or the discovery of the fraud or mistake: Provided, This section shall not be construed so as to bar an equitable owner in possession of real property from defending his possession by means of his equitable title; and in any action for the recovery of any real property, or the possession thereof, by any person or persons claiming or holding the legal title to the same under such patent against any person or persons in possession of such real property under any equitable title, or having in equity the right to the possession thereof as against the plaintiff in such action, such equitable right of possession may be pleaded by answer in such action, or set up by complaint to enjoin such action or execution upon any judgment rendered therein; and the right of such equitable owner to defend his possession in such action, or by complaint for injunction, shall not be barred by lapse of time while an action for the possession of such real property is not barred by the provisions of chapter two of this title.

Laws Oreg., Oct. 17, 1878; Hill's Ann. Laws, s. 382; Baker v. Woodward, 12 Oreg., 4; Anderson v. Baxter, 4 id., 105; Spain v. McBee, 19 id., 78; Raymon v. Flavel, 27 id., 220.

Sec. 362. **In whose name suit to be prosecuted.** Every action of an equitable nature shall be prosecuted in the name of the real party in interest, except as in this section otherwise provided. An executor or an administrator, a trustee of an express trust, or a person expressly authorized to sue by statute, may sue without joining with him the person for whose benefit the action is prosecuted. A trustee of an express trust within the meaning of this section shall be construed to include a person with whom and in whose name a contract is made for the benefit of another.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 383.

Sec. 363. **Plaintiffs and defendants, who may be.** All persons having an interest in the subject of the action and in obtaining the relief demanded may be joined as plaintiffs, except as in this chapter otherwise provided. Any person may be made a defendant who has or claims an interest in the controversy adverse to the plaintiff, or who is a necessary party to a complete determination or settlement of the questions involved therein.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 384.

Sec. 364. **Same subject.** Of the parties to the action, those who are united in interest must be joined as plaintiffs or defendants; but if the consent of anyone who should have been joined as plaintiff can not be obtained, he may be made a defendant, the reason thereof being stated in the complaint; and when the question is one of a common or general interest of many persons, or when the parties are very numerous, and it may be impracticable to bring them all before the court, one or more may sue or defend for the benefit of the whole.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 385; State Ins. Co. v. O. R. & N. Co., 20 Oreg., 568.

Sec. 365. **Service of complaint.** When there is more than one defendant in the action, service of only one copy of the complaint shall be required, the same to be served on the defendant designated by the plaintiff or his attorney by a direction indorsed on such summons, but the summons served on the

other defendants shall contain a brief statement of the cause of action and relief demanded.

Sec. 366. **Service of summons by publication.** In addition to the causes enumerated in the subdivisions of section forty-seven, service of the summons may be made by publication in the following cases:

First. When the subject of the action is real or personal property in the district, and the defendant has or claims a lien or interest actual or contingent therein, or the relief demanded consists wholly or partly in excluding the defendant from any lien or interest therein;

Second: When the action is for divorce, as hereinafter provided.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 391.

Section 367. **Objections which may be made on trial.** The objection to the jurisdiction of the court, or that the complaint does not state facts sufficient to constitute a cause of action, if not taken by demurrer or answer, may be made on the trial.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 392; Kitcherside v. Myers, 10 Oreg., 21.

Sec. 368. **Counterclaim of defendant.** The counterclaim of the defendant shall be one upon which an action might be maintained by the defendant against the plaintiff in the action; and in addition to the cases specified in the subdivisions of section sixty-four, it is sufficient if it be connected with the subject of the action.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 393; Sears v. Martin, 22 Oreg., 312; Conn v. Conn, id., 455.

Sec. 369. **What causes of suit may be united.** The plaintiff in an action of an equitable nature may unite several causes of action in the same complaint, where they all arise out of—

First. The same transaction, or transactions connected with the same subject of action;

Second. Contract, express or implied; or,

Third. Injuries, with or without force, to property;

Fourth. Claims to real property, or any interest therein, with or without an account for the rents and profits thereof;

Fifth. Claims to personal property, or any interest therein, with or without an account for the use thereof;

Sixth. Claims against a trustee by virtue of a contract or by operation of law.

But the causes of action so united must all belong to one of these classes, and must affect all the parties to the action and not require different places of trial, and shall be separately stated.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 394.

Sec. 370. **Arrest and bail.** The writ of ne exeat is abolished, and instead thereof the plaintiff in an action may have the defendant arrested and held to bail in like manner and with like effect as provided in the chapter of this title "Of arrest and bail." A cause of arrest in an action shall be the same as those specified in section ninety-nine, so far as the same may exist, and not otherwise.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 395.

CHAPTER THIRTY-NINE.

OF THE TRIAL OF ISSUES IN ACTIONS OF AN EQUITABLE NATURE.

Sec.
371. Certain provisions to apply.
372. How and when testimony taken.
373. Conduct of the trial.
374. Objections to depositions, when and how made.
375. Same subject.
376. Chapters 20 and 24 shall apply.
377. Judgment of dismissal before trial and effect thereof.
378. Same after trial.
379. Chapters 26, 27, and 28 to apply.
380. When judgment may be given in vacation; entry, roll, and final record thereof.

Sec. 371. **Chapter to apply to suits.** The provisions of chapter fifteen of this title shall apply to actions of an equitable nature except as in this chapter otherwise or specially provided. Both issues of law and fact shall be tried by the court, unless referred. Whenever it becomes necessary or proper to inquire of any fact by the verdict of a jury, the court may direct a statement thereof, and that a jury be formed to inquire of the same. The statement shall be tried as an issue of fact in an action, and the verdict may be read as evidence on the trial of the action.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 396; De Lashmutt v. Evarson, 7 Oreg., 217; Swegle v. Wells, id., 222; De Lashmutt v. Tillitson, id., 212; Raymon v. Flavel, 27 id., 220.

Sec. 372. **How and when testimony taken.** All issues of fact in actions of an equitable nature may be tried by the court, and if tried by the court, the evidence shall be presented and the trial conducted in the same manner as other actions: Provided, The court may, in its discretion, refer the case to a referee pursuant to the provisions of this title. In all such actions the court in rendering its decisions therein, shall set out in writing its findings of fact upon all the material isses of fact presented by the pleadings, together with its conclusions of law thereon; but such findings of fact and conclusions of law shall be separate from the judgment, and shall be filed with the clerk, and shall be incorporated in, and constitute a part of, the judgment roll of the case; and such findings of fact shall have the same force and effect, and be equally conclusive, as the verdict of a jury in an action. Exceptions may be taken during the trial to the ruling of the court, and also to its findings of fact, and a statement of such exceptions prepared and settled as in an action, and the same shall be filed with the clerk within ten days from the entering of the decree (judgment) or such further time as the court may allow.

Laws Oreg., Feb. 24, 1885; Hill's Ann. Laws, s. 397; Martin v. Martin, 14 Oreg., 165; Marks v. Crow, id., 382; Verdier v. Bigne, 16 id., 208; Craig v. Cal. V. Co., 30 id., 43.

Sec. 373. **Conduct of trial.** When the suit is called for trial, the trial shall proceed in the order prescribed in subdivisions one, two, three, four, and five of section one hundred and eighty-seven, unless the court for special reasons otherwise directs.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 398.

Sec. 374. **Objections to depositions.** Upon the trial either party may object to the reading of a deposition or any part thereof, when offered by the other because the witness is incompetent, or the testimony is so, or irrelevant, and not otherwise. All other objections to depositions shall be taken by written exceptions filed with the clerk within twenty days from the filing of the

testimony, and may be heard and decided by the court or judge thereof at any time thereafter before the trial of the action.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 399.

Sec. 375. **Same subject.** When it appears from the deposition that a party was present at the examination of a witness, such party shall not be heard to object to anything in or concerning such deposition not excepted to at the time of taking the same, except the objections allowed to be taken on the trial as provided in section three hundred and seventy-two of this title. When any part of the examination of a witness is excluded for any reason, so much of the cross-examination as relates to the same matter is excluded also.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 400.

Sec. 376. **Certain provisions apply to suits.** The provisions of chapters twenty and twenty-four of this title shall apply to actions of an equitable nature, but the final determination of the rights of the parties thereto is called a judgment, and any intermediate determination is called an order.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 401.

Sec. 377. **Judgment of dismissal after trial.** A judgment dismissing an action may be given against the plaintiff in any of the cases specified in subdivisions one, two, and three of section two hundred and thirty-seven, except the last clause of such subdivision three. Such judgment is a determination of the action, but shall not have the effect to bar another action for the same cause or any part thereof.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 402; Lambert v. Lambert, 16 Oreg., 486.

Sec. 378. **Judgment of dismissal before trial.** Whenever upon the trial it is determined that the plaintiff is not entitled to the relief claimed, or any part thereof, a judgment shall be given dismissing the action, and such judgment shall have the effect to bar another action for the same cause or any part thereof, unless such determination be on account of a failure of proof on the part of the plaintiff, in which case the court may, on motion of such plaintiff, give such judgment without prejudice to another action by the plaintiff for the same cause or any part thereof.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 403.

Sec. 379. **Certain sections applicable to suits.** The provisions of chapters twenty-six and twenty-seven of this title, from and inclusive of section two hundred and forty-one to and inclusive of section two hundred and forty-four, shall apply to actions of an equitable nature. The provisions of chapter twenty-eight shall apply to controversies which might be the subject of such an action.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 404.

Sec. 380. **When judgment may be given in vacation.** When upon the submission of such an action the court is unadvised as to what judgment ought to be given therein, it may reserve the case for further consideration, and may decide the same and give such judgment in vacation by filing the same with the clerk. When a judgment is given in an action of an equitable nature, unless otherwise ordered by the court, it shall be entered by the clerk within the day it is given. Sections two hundred and fifty-one, two hundred and fifty-two, two hundred and fifty-four, two hundred and fifty-five, and two hundred and fifty-nine of this title shall apply to actions of an equitable nature. The provisions of chapter thirty of this title shall apply to judgments and the final record or roll thereof.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 405; Chapman v. Wilber, 5 Oreg., 299; Willis v. Miller, 23 id., 352.

CHAPTER FORTY.

OF THE MODE OF ENFORCING A JUDGMENT IN ACTIONS OF AN EQUITABLE NATURE.

Sec.
381. When equivalent to performance.
Sec.
382. Certain chapters to apply.

Sec. 381. **When decree equivalent to performance.** A judgment requiring a party to make a conveyance, transfer, release, acquittance, or other like act within a period therein specified shall, if such party do not comply therewith, be deemed and taken to be equivalent thereto. The court or judge thereof may enforce an order or judgment in an action of an equitable nature, other than for the payment of money, by punishing the party refusing or neglecting to comply therewith, as for a contempt.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 406; Rostel v. Morat, 19 Oreg., 185.

Sec. 382. **Certain chapters applicable.** The provisions of chapter thirty-one of this title shall apply to the enforcement of judgments so far as the nature of the judgment may require or admit of it, but the mode of trial of an issue of fact in a proceeding against a garnishee shall be according to the mode of trial of such issue in an action.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 407.

CHAPTER FORTY-ONE.

OF INJUNCTION.

Sec.
383. Definition of, and how permanent injunction enforced.
384. Allowance of injunction.
385. Service of the order allowing the injunction.
Sec.
386. When defendant may be restrained during the pendency of the action.
387. Allowance of injunction after answer.
388. Motion to vacate or modify injunction.

Sec. 383. **Injunction, definition of, and how enforced.** An injunction is an order requiring a defendant in an action to refrain from a particular act. It is only allowed as a provisional remedy, and when a judgment is given enjoining a defendant, such judgment shall be effectual and binding on such defendant without other proceeding or process, and may be enforced, if necessary, as provided in section three hundred and eighty-one.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 408; Wells, Fargo & Co. v. Oreg. R. & N. Co., 9 Saw., 601; Helm v. Gilroy, 20 Oreg., 520.

Sec. 384. **Allowance of injunction. Undertaking.** An injunction may be allowed by the court or judge thereof at any time after the commencement of the action and before judgment. Before allowing the same the court or judge shall require of the plaintiff an undertaking, with one or more sureties, to the effect that he will pay all costs and disbursements that may be decreed to the defendant, and such damages, not exceeding an amount therein specified, as

he may sustain by reason of the injunction if the same be wrongful or without sufficient cause.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 409; Stone v. Carson, 1 Oreg., 100.

Sec. 385. **Service of order.** The undertaking and affidavits, if any, upon which the injunction is allowed, shall be filed with the clerk. The order may be served as a summons and returned to the clerk, with a proof of service indorsed thereon, except that the service shall be made upon the defendant personally. The order may be filed with the clerk at once, and shall be deemed to be served upon the defendant from the date of its allowance, if it appear therefrom that the defendant appeared before the court or judge at the allowance thereof.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 410.

Sec. 386. **Injunction during pendency of suit.** When it appears by the complaint that the plaintiff is entitled to the relief demanded, and such relief, or any part thereof, consists in restraining the commission or continuance of some act the commission or continuance of which during the litigation would produce injury to the plaintiff; or when it appears by affidavit that the defendant is doing, or threatens or is about to do, or is procuring or suffering to be done, some act in violation of the plaintiff's rights concerning the subject of the action, and tending to render the judgment ineffectual; or when it appears by affidavit that the defendant threatens or is about to remove or dispose of his property, or any part thereof, with intent to delay or defraud his creditors, an injunction may be allowed to restrain such act, removal, or disposition.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 411; Tongue v. Gaston, 10 Oreg., 338; Wellman v. Harker, 8 id., 353; Portland v. Baker, 12 id., 356; Woodruff v. North Bloomfield M. Co. 9 Saw., 441; Davenport v. Magoon, 13 Oreg., 3; Smith v. Gardner, 13 Oreg., 221; Price v. Knot, 8 id., 438; Helm v. Gilroy, 20 id., 520.

Sec. 387. **Injunction after answer.** An injunction shall not be allowed after the defendant has answered, except upon notice, but in such case the defendant may be restrained until the decision of the court or judge allowing or refusing the injunction; and before answer, if the court or judge deem it proper that the defendant should be heard before allowing an injunction, an order may be made requiring the defendant to show cause, at a specified time and place, why the injunction should not be allowed, and in the meantime the defendant may be restrained.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 412.

Sec. 388. **Motion to vacate or modify injunction.** If the injunction be allowed without notice, the defendant may, at any time after answer, and before trial, apply, upon notice, to the court or judge thereof, to vacate or modify the same. The application may be made upon affidavits in addition to the answer, and if so, the plaintiff may oppose the same by affidavits, or other evidence, in addition to those upon which the injunction was allowed. If, upon the hearing of the motion, it satisfactorily appear that the injunction should not have been allowed, either in whole or in part, it shall be vacated or modified accordingly.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 413; Willis v. Miller, 22 Oreg., 352.

CHAPTER FORTY-TWO.

OF THE FORECLOSURE OF LIENS UPON REAL PROPERTY.

Sec.
389. Liens upon real property, how foreclosed.
390. Parties defendant.
391. Where two or more liens upon the same property.
392. How judgment enforced.
393. Property sold upon foreclosure, how redeemed.
394. Action for foreclosure can not be maintained during pendency of action for the debt.
395. Nature of judgment where debt payable in installments some of which not due.
396. Effect of payment before sale.

Sec. 389. **Liens, how foreclosed.** A lien upon real property, other than that of a judgment, whether created by mortgage or otherwise, shall be foreclosed, and the property adjudged to be sold to satisfy the debt secured thereby, by an action of an equitable nature. In such action, in addition to the judgment of foreclosure and sale, if it appear that a promissory note or other personal obligation for the payment of the debt has been given by the mortgagor or other lien debtor, or by any other person as principal or otherwise, the court shall also adjudge a recovery of the amount of such debt against such person or persons, as the case may be, as in the case of an ordinary judgment for the recovery of money.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 414; Jacobs v. McCalley, 8 Oreg., 124; Selwood v. Gray, 11 id., 535; Verdier v. Bigne, 16 id., 208; Thompson v. Marshal, 21 id., 178; Willis v. Miller, 23 id., 352.

Sec. 390. **Parties to foreclosure suit.** Any person having a lien subsequent to the plaintiff upon the same property or any part thereof, or who has given a promissory note or other personal obligation for the payment of the debt or any part thereof, secured by the mortgage or other lien which is the subject of the action, shall be made a defendant in the action, and any person having a prior lien may be made defendant at the option of the plaintiff, or by the order of the court when deemed necessary.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 415; Fahie v. Pressey, 2 Oreg., 23; Osborne v. Logus, 28 id., 310.

Sec. 391. **Decree where more than one lien on same property.** When it is adjudged that any of the defendants have a lien upon the property, the court shall make a like judgment in relation thereto, and the debt secured thereby, as if such defendant were a plaintiff in the action; and when a judgment is given foreclosing two or more liens upon the same property or any portion thereof in favor of different persons not united in interest, such judgment shall determine and specify the order of time according to their priority, in which the debts secured by such lien shall be satisfied out of the proceeds of the sale of the property.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 416; Hovenden v. Knot, 12 Oreg., 267.

Sec. 392. **Enforcement of decree.** The judgment may be enforced by execution as an ordinary judgment for the recovery of money, except as in this section otherwise or specially provided:

First. When a judgment of foreclosure and sale is given, an execution may issue thereon against the property adjudged to be sold. If the judgment is in favor of the plaintiff only, the execution may issue as in ordinary cases, but if it be in favor of different persons, not united in interest, it shall issue upon the

joint request of such persons, or upon the order of the court or judge thereof, on the motion of either of them.

Second. When the judgment is also against the defendants or any one of them in person, and the proceeds of the sale of the property upon which the lien is foreclosed is not sufficient to satisfy the judgment as to the sum remaining unsatisfied to either, the judgment may be enforced by execution as in ordinary cases. When in such case the judgment is in favor of different persons not united in interest, it shall be deemed a separate judgment as to such persons, and may be enforced accordingly.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 417; Chavener v. Wood, 2 Oreg., 182.

Sec. 393. **Redemption after sale of foreclosure.** A judgment of foreclosure shall have the effect to bar the equity of redemption, and property sold on execution issued upon a judgment may be redeemed in like manner and with like effect as real property sold on an execution issued on a judgment.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 418; Lauriat v. Stratton, 6 Saw., 339.

Sec. 394. **Suit not maintainable during pendency of action.** During the pendency of an action for the recovery of a debt secured by any lien mentioned in section three hundred and eighty-nine, an action can not be maintained for the foreclosure of such lien, nor thereafter, unless judgment be given in such action that the plaintiff recover such debt or some part thereof, and an execution thereon against the property of the defendant in the judgment is returned unsatisfied in whole or in part.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 420.

Sec. 395. **Judgment where debt payable in installments.** When an action is commenced to foreclose a lien by which a debt is secured, which debt is payable in installments, either of interest or principal, and any of such installments is not then due, the court shall adjudge a foreclosure of the lien, and may also adjudge a sale of the property for the satisfaction of the whole of such debt, or so much thereof as may be necessary to satisfy the installment then due, with costs of action; and in the latter case the judgment of foreclosure as to the remainder of the property may be enforced by an order of sale, in whole or in part, whenever default shall be made in the payment of the installments not then due.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 421.

Sec. 396. **Effect of payment before sale.** If, before a judgment is given, the amount then due, with the costs of action, is brought into court and paid to the clerk, the action shall be dismissed, and if the same be done after judgment and before sale, the effect of the judgment as to the amount then due and paid shall be terminated, and the execution, if any have issued, be recalled by the clerk. When an installment not due is adjudged to be paid, the court shall determine and specify in the judgment what sum shall be received in satisfaction thereof, which sum may be equal to such installment, or otherwise according to the present value thereof. The provisions of this chapter as to liens upon personal property are not to be construed so as to exclude a person having such a lien from any other remedy or right in regard to such property.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 422.

CHAPTER FORTY-THREE.

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Sec. 397. **Who may maintain suit for partition.** When several persons hold and are in possession of real property as tenants in common, in which one or more of them have an estate of inheritance, or for life or years, or when several persons hold as tenants in common a vested remainder or reversion in any real property, any one or more of them may maintain an action of an equitable nature for the partition of such real property, according to the respective rights of the persons interested therein, and for a sale of such property, or a part of it, if it appears that a partition can not be had without great prejudice to the owners.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 423; Savage v. Savage, 19 Oreg., 112; Marx v. La Roque, 27 id., 45.

Sec. 398. **Complaint.** The interests of all persons in the property, whether such persons be known or unknown, shall be set forth in the complaint, specifically and particularly, as far as known to the plaintiff; and if one or more of the parties, or the share or quantity of interest of any of the parties, be un-

known to the plaintiff, or be uncertain or contingent, or the ownership of the inheritance depend upon an executory devise, or the remainder be a contingent remainder, so that such parties can not be named, that fact shall be set forth in the complaint.

Laws, Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 424; Hammer v. Silver, 2 Oreg., 336.

Sec. 399. **Lien creditors as defendants.** The plaintiff shall make creditors having liens upon the property or any portion thereof, defendants in the action. When the lien is upon an undivided interest or estate of any of the parties, such lien, if a partition be made, is thenceforth a lien only upon the share assigned to such party, but such share shall be first charged with its just proportion of the costs of the partition, in preference to such lien.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 425.

Sec. 400. **Summons.** The summons shall be directed by name to all the tenants in common who are known, and in the same manner to all lien creditors who are made parties to the action, and generally to all persons unknown, having or claiming an interest or estate in the property.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 426.

Sec. 401. **Service by publication.** If a party having a share or interest in or lien upon the property be unknown, or either of the known parties reside out of the district or can not be found therein, and such fact be made to appear by affidavit, the summons may be served upon such absent or unknown party by publication, directed by the court or judge, as in ordinary cases. When service of the summons is made by publication it must be accompanied by a brief description of the property which is the subject of the action.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 427.

Sec. 402. **Answer, what to contain.** The defendant shall set forth in his answer the nature and extent of his interest in the property, and if he be a lien creditor, how such lien was created, the amount of the debt secured thereby, and remaining due, and whether such debt is secured in any other way, and if so, the nature of such other security.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 428.

Sec. 403. **Rights of the several parties determined.** The rights of the several parties, plaintiffs as well as defendants, may be put in issue, tried, and determined in such action, and where a defendant fails to answer, or where a sale of the property is necessary, the title shall be ascertained by proof to the satisfaction of the court before the judgment for partition or sale is given.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 429.

Sec. 404. **Order of sale instead of judgment of partition.** If it be alleged in the complaint and established by evidence, or if it appear by the evidence, without such allegation in the complaint, to the satisfaction of the court, that the property, or any part of it, is so situated that partition can not be made without great prejudice to the owners, the court may order a sale thereof, and for that purpose may appoint one or more referees. Otherwise, upon the requisite proofs being made, it shall adjudge a partition according to the respective rights of the parties, as ascertained by the court, and appoint three referees therefor, and shall designate the portion to remain undivided for the owners whose interests remain unknown or not ascertained.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 430.

Sec. 405. **Report of referees.** In making the partition the referees shall divide the property and allot the several portions thereof to the respective parties, quality and quantity relatively considered, according to the respective

rights of the parties as determined by the court, designating the several portions by proper landmarks, and may employ a surveyor with the necessary assistants to aid them therein. The referees shall make a report of their proceedings, specifying therein the manner of executing their trust, describing the property divided and the shares allotted to each party, with a particular description of each share.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 431.

Sec. 406. **Power of court over report. Judgment.** The court may confirm or set aside the report in whole or in part, and if necessary appoint new referees. Upon the report being confirmed, a judgment shall be given that such partition be effectual forever, which judgment shall be binding and conclusive—

First. On all parties named therein, and their legal representatives, who have at the time any interest in the property divided, or any part thereof, as owners in fee, or as tenants for life or for years, or as entitled to the reversion, remainder, or inheritance of such property or any part thereof after the termination of a particular estate therein, or who by any contingency may be entitled to a beneficial interest in the property, or who have an interest in any undivided share thereof as tenants for years or for life;

Second. On all persons interested in the property who may be unknown, to whom notice shall have been given of the application for partition by publication, as directed by section four hundred and one; and

Third. On all other persons claiming from such parties or persons or either of them.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 432; Savage v. Savage, 19 Oreg., 112.

Sec. 407. **Who not affected by partition.** But such judgment and partition shall not affect any tenants for years or for life of the whole of the property which is the subject of partition; nor shall such judgment or partition preclude any person, except such as are specified in the last section, from claiming title to the property in question, or from controverting the title of the parties between whom the partition shall have been made.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 433.

Sec. 408. **Expenses of referees.** The expenses of the referees, including those of a surveyor and his assistants, when employed, shall be ascertained and allowed by the court, and the amount thereof, together with the fees allowed by law to the referees, shall be paid by the plaintiff, and may be allowed as part of the charges.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 434.

Sec. 409. **Order of sale on referees' report.** If the referees report to the court that the property of which partition shall have been adjudged, or any separate portion thereof, is so situated that a partition thereof can not be made without great prejudice to the owners, and the court is satisfied that such report is correct, it may thereupon, by an order, direct the referees to sell the property or separate portion thereof so situated.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 435.

Sec. 410. **Partial sale. Estate, how set off.** When a part of the property only is ordered to be sold, if there be an estate for life or years in an undivided share of the property, the whole of such estate may be set off in any part of the property not ordered to be sold.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 436.

Sec. 411. **Reference to ascertain lien creditors.** If an order of sale be made, and before a distribution of the proceeds thereof the plaintiff shall produce to the court a certificate showing the liens remaining unsatisfied,

if any, by judgment upon the property, or any portion thereof, and unless he do so the court shall order a referee to ascertain them.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 438.

Sec. 412. **Referees to ascertain amount of liens.** If it appear by such certificate, or reference in case the certificate is not produced, that any such liens exist, the court shall appoint a referee to ascertain what amount remains due thereon or secured thereby respectively, and the order of priority in which they are entitled to be paid out of the property.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 439.

Sec. 413. **Notice to lien creditors to appear.** The plaintiff must cause a notice to be served, at least ten days before the time for appearance, on each person having such lien by judgment to appear before the referee at a specified time and place to make proof by his own affidavit or otherwise of the true amount due, or to become due, contingently or absolutely, on his judgment.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 440.

Sec. 414. **Duties of referee.** The referee shall receive the evidence and report the names of the creditors whose liens are established, the amounts thereon or secured thereby, and their priority, respectively, and whether contingent or absolute. He shall attach to his report the proof of service of the notices and the evidence before him.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 441.

Sec. 415. **Report of referee.** The report of the referee may be excepted to by either party to the action or to the proceedings before the referee, in like manner and with like effect as in ordinary cases. If a lien creditor be absent from the district, or his residence therein be unknown, and that fact appear by affidavit, the court or judge thereof may by order direct that service of the notice may be made upon his agent or attorney of record, or by publication thereof for such time and in such manner as the order may prescribe.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 442.

Sec. 416. **Confirmation of referee's report.** If the report of the referee be confirmed, the order of confirmation is binding and conclusive upon all parties to the action and upon the lien creditors who have been duly served with the notice to appear before the referee as provided in section four hundred and thirteen.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 443.

Sec. 417. **Distribution of proceeds of sale.** The proceeds of the sale of the encumbered property shall be distributed by the judgment of the court as follows:

First. To pay its just proportion of the general costs of the action;

Second. To pay the costs of the reference;

Third. To satisfy the several liens, in their order of priority, by payment of the sums due, and to become due, according to the judgment;

Fourth. The residue among the owners of the property sold, according to their respective shares.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 444.

Sec. 418. **When party may be required to exhaust other securities.** Whenever any party to the action or who holds a lien upon the property or any part thereof has other securities for the payment of the amount of such lien, the court may, in its discretion, order such securities to be exhausted

before a distribution of the proceeds of sale, or may order a just deduction to be made from the amount of the lien on the property on account thereof.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 445.

Sec. 419. **Proceedings not to delay other parties.** The proceedings to ascertain the amount of the liens and to determine their priority, as above provided, or those hereinafter authorized to determine the rights of parties to funds paid into court, shall not delay the sale nor affect any other party whose rights are not involved in such proceedings.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 446.

Sec. 420. **Proceeds to be distributed by referees.** The proceeds of sale, and the securities taken by the referees, or any part thereof, shall be distributed by them to the persons entitled thereto whenever the court so directs. But if no such direction be given, all such proceeds and securities shall be paid into court or deposited as directed by the court.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 447.

Sec. 421. **Proceedings after proceeds paid into court.** When the proceeds of sales of any shares or parcel belonging to persons who are parties to the action, and who are known, are paid into court, the action may be continued as between such parties for the determination of their respective claims thereto, which shall be ascertained and adjudged by the court. Further testimony may be taken in court, or by a referee, at the discretion of the court, and the court may, if necessary, require such parties to present the facts or law in controversy, by pleading, as in an original action.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 448.

Sec. 422. **Sales by referees.** All sales of real property made by the referees shall be made by public auction to the highest bidder, in the manner required for the sale of real property on execution. The notice shall state the time, place and terms of sale, and if the property or any part of it is to be sold subject to a prior estate, charge, or lien, that shall be stated in the notice.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 449.

Sec. 423. **Sale may be made on credit.** The court shall, in the order of sale, direct the terms of credit which may be allowed for the purchase money of any portion of the premises of which it may direct a sale on credit; and for that portion of which the purchase money is required by the provisions hereinafter contained to be invested for the benefit of unknown owners, infants, and parties out of the district.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 450.

Sec. 424. **Securities to be taken by referee.** The referees may take separate mortgages and other securities for the whole or convenient portions of the purchase money of such parts of the property as are directed by the court to be sold on credit, in the name of the clerk of the court, and his successor in office; and for the shares of any known owner of full age, in the name of such owner.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 451.

Sec. 425. **Estate for life or years.** When the estate of any tenant for life or years, in any undivided part of the property in question, shall have been admitted by the parties, or ascertained by the court to be existing at the time of the order of sale, and the person entitled to such estate shall have been made a party to the action, such estate may be first set off out of any part of the property, and a sale made of such parcel, subject to the prior unsold estate of such tenant therein; but if in the judgment of the court a

due regard to the interest of all the parties require that such estate be also sold, the sale may be so ordered.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 452.

Sec. 426. Compensation in case of sale. Any person entitled to an estate for life or years in any undivided part of the property, whose estate shall have been sold, shall be entitled to receive such sum in gross as may be deemed upon principles of law applicable to annuities a reasonable satisfaction for such estate, and which the person so entitled shall consent to accept instead thereof, by an instrument duly acknowledged or proved in the same manner as deeds for the purpose of record, and filed with the clerk.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 453.

Sec. 427. When court to determine value of estate. If such consent be not given, as provided in the last preceding section, before the report of sale, the court shall ascertain and determine what proportion of the proceeds of the sale, after deducting expenses, will be a just and reasonable sum to be invested for the benefit of the person entitled to such estate for life or years, and shall order the same to be deposited in court for that purpose.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 454.

Sec. 428. Rule for determining value of estate. The proportion of the proceeds of the sale to be invested as provided in the section last preceding shall be ascertained and determined in the several cases as follows:

First. If an estate in dower be included in the order of sale, its proportion shall be one-third of the proceeds of the sale of the property, or of the sale of the undivided share in such property upon which the claim of dower existed;

Second. If an estate by the curtesy, or other estate for life or years, be included in the order of sale, its proportion shall be the whole proceeds of the sale of the property, or of the sale of the undivided share thereof in which such estate may be.

And in all cases the proportion of the expenses of the proceeding shall be deducted from the proceeds of the sale.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 455.

Sec. 429. Rights of unknown tenants. If the persons entitled to such estate for life or years be unknown, the court shall provide for the protection of their rights in the same manner, as far as may be, as if they were known and had appeared.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 456.

Sec. 430. Inchoate and contingent interests. In all cases of sales in partition, when it appears that a married woman has an inchoate right of dower in any of the property sold, or that any person has a vested or contingent future right or estate therein, the court shall ascertain and settle the proportional value of such inchoate, contingent, or vested right or estate according to the principles of law applicable to annuities and survivorship, and shall direct such proportion of the proceeds of sale to be invested, secured, or paid over in such manner as to protect the rights and interests of the parties.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 457.

Sec. 431. Terms of sale. In all cases of sales of property, the terms shall be made known at the time; and if the premises consist of distinct farms or lots, they shall be sold separately, or otherwise if the court so directs.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 458.

Sec. 432. **Referee not to purchase.** Neither of the referees, nor any person for the benefit of either of them, shall be interested in any purchase; nor shall the guardian of an infant party be interested in the purchase of any real property, being the subject of the action, except for the benefit of the infant. All sales contrary to the provisions of this section shall be void.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 459.

Sec. 433. **Report of sale.** After completing the sale, the referees shall report the same to the court, with a description of the different parcels of lands sold to each purchaser, the name of the purchaser, the price paid or secured, the terms and conditions of the sale, and the securities, if any, taken. The report shall be filed with the clerk.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 460.

Sec. 434. **Exceptions to report; confirmation of sale.** The report of sale may be excepted to by any party entitled to a share of the proceeds, in like manner and with like effect as in ordinary cases. If the sale be confirmed, the order of confirmation shall direct the referees to execute conveyances and take securities pursuant to such sale, which acts they are hereby authorized to do. Such order shall have the effect to discharge the property of the estate or interest of every person mentioned in section four hundred and six, and of tenants for life or years of the property sold, and shall be binding and conclusive upon all such persons, as if the same were a decree for the partition of such property, and upon all persons whomsoever as to the regularity of the proceedings concerning such sale, except as provided in section four hundred and thirty-two.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 461.

Sec. 435. **When party entitled to share or encumbrancer buys.** When a party entitled to a share of the property or an encumbrancer entitled to have his lien paid out of the sale becomes a purchaser, the referees may take his receipt for so much of the proceeds of the sale as belongs to him.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 462.

Sec. 436. **Proceeds of sale to be invested.** When there are proceeds of sale belonging to an unknown owner, or to a person without the district who has no legal representatives within it, or when there are proceeds arising from the sale of an estate subject to the prior estate of a tenant for life or years, which are paid into the court or otherwise deposited by order of the court, the same may be invested under such order in securities on interest for the benefit of the persons entitled thereto.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 463.

Sec. 437. **In whose name securities taken.** When the security for the proceeds of sale is taken, or when an investment of any such proceeds is made, it shall be done, except as herein otherwise provided, in the name of the clerk of the court and his successors in office, who shall hold the same for the use and benefit of the parties interested, subject to the order of the court.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 464.

Sec. 438. **Same subject.** When security is taken by the referees on a sale, and the parties interested in such security, by an instrument in writing under their hands delivered to the referee, agree upon the shares and proportions to which they are respectively entitled, or when shares and proportions have been previously adjudged by the court, such securities shall be taken in the names of and payable to the parties respectively entitled thereto, and shall be delivered to such parties upon their receipt therefor. Such agreement and receipt shall be returned and filed with the clerk.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 465.

Sec. 439. **Clerk to keep account of securities and investments.** The clerk in whose name a security is taken, or by whom an investment is made, and his successors in office, shall receive the interest and principal as it becomes due, and apply and invest the same as the court may direct; and shall file in his office all securities taken, and keep an account in a book provided and kept for that purpose in the clerk's office, free for inspection by all persons, of investments and moneys received by him thereon, and the disposition thereof.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 466.

Sec. 440. **When equal partition can not be made.** When it appears that partition can not be made equal between the parties, according to their respective rights, without prejudice to the rights and interests of some of them, the court may adjudge compensation to be made by one party to another on account of inequality of partition; but such compensation shall not be required to be made to others by owners unknown, nor by infants, unless in case of an infant it appear that he has personal property sufficient for that purpose, and that his interest will be promoted thereby.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 467.

Sec. 441. **When proceeds paid to guardian of infants.** When the share of an infant is sold, the proceeds of the sale may be paid by the referees making the sale, to his general guardian, or the special guardian appointed for him in the action, upon such guardian giving the security required by law or directed by order of the court.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 468.

Sec. 442. **When paid to guardian of insane person.** The guardian who may be entitled to the custody and management of the estate of an insane person, or other person adjudged incapable of conducting his own affairs, whose interest in real property shall have been sold, may receive, in behalf of such person, his share of the proceeds of such real property from the referees on executing, with sufficient sureties, an undertaking, approved by the judge of the court, that he will faithfully discharge the trust reposed in him, and will render a true and just account to the person entitled, or to his legal representatives.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 469.

Sec. 443. **Costs, how apportioned.** The costs of partition, including fees of referees and other disbursements, shall be paid by the parties respectively entitled to share in the lands divided, in proportion to their respective interests therein, and may be included and specified in the judgment. In that case, they shall be a lien on the several shares, and the judgment may be enforced by execution against the parties separately. When, however, a litigation arises between some of the parties only, the court may require the expenses of such litigation to be paid by the parties thereto, or any of them.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 471.

CHAPTER FORTY-FOUR.

OF ACTIONS OF AN EQUITABLE NATURE BY AND AGAINST EXECUTORS, ADMINISTRATORS, LEGATEES, HEIRS, AND DEVISEES.

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Sec. 444. **What causes survive.** The provisions of chapter thirty-seven of this title shall apply to actions of an equitable nature by and against executors and administrators, except as in this chapter otherwise or specially provided. Sections three hundred and fifty-one, three hundred and fifty-two, and three hundred and fifty-three of such chapter shall not so apply. All causes of actions of an equitable nature by one person against another, however arising, survive to the personal representatives of the former and against the personal representatives of the latter. When the cause of action survives, as herein provided, the executors or administrators may maintain an action of an equitable nature thereon against the party against whom the cause of action accrued, or after his death against his personal representatives.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 472; Renshaw v. Taylor, 7 Oreg., 315.

Sec. 445. **Suits against next of kin.** The next of kin of a deceased person are liable to an action by a creditor of the estate to recover the distributive shares received out of such estate, or to so much thereof as may be necessary to satisfy his debt. The action may be against all the next of kin jointly or against any one or more of them severally.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 473; Grange Union v. Burkhart, 8 Oreg., 51; Wolff v. Can. Pac. Ry., 337.

Sec. 446. **Each liable for whole amount received.** In such action the plaintiff may recover the value of all the assets received by all the defendants in the action if necessary to satisfy his debt; and the amount of the recovery shall be apportioned among the defendants, in proportion to the value of the assets received by each; and no allowance or deduction shall be made from such amount on account of there being other next of kin to whom assets have also been delivered.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 474.

Sec. 447. **Suits for contribution between next of kin.** Any one of the next of kin against whom a recovery is had pursuant to section four hundred and forty-six may maintain an action against all the other next of kin of the

deceased person to whom any such assets have been delivered jointly, or against any of them separately, for a just and equal contribution, and may recover of each defendant such amount as shall be in the same proportion to the whole sum collected of the plaintiff as the value of the assets delivered to such defendant bore to the value of all the assets delivered to all the next of kin of the deceased.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 475.

Sec. 448. **Suits against legatees.** Legatees are liable to an action by a creditor of the testator to recover the value of any legacy received by them. The action may be maintained against all the legatees jointly or against any one or more of them severally. In such action the plaintiff shall not recover unless he shows—

First. That no assets were delivered by the executor or administrator of the testator to his next of kin; or,

Second. That the value of such assets has been recovered by some other creditor; or

Third. That such assets are not sufficient to satisfy the demand of the plaintiff.

And in the last case he shall recover only the deficiency. The whole amount which the plaintiff shall recover shall be apportioned among all the legatees of the testator in proportion to the value of their legacies respectively, and his proportion shall only be recovered of each legatee.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 476.

Sec. 449. **Apportionment of costs.** In an action against several next of kin or legatees jointly for assets delivered to them, if a recovery be had against such next of kin or legatees, the cost of such action shall be apportioned among the several defendants in proportion to the amount recovered against each of them.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 477.

Sec. 450. **Payment of decree against several.** A decree against several next of kin or legatees shall be satisfied as to any one of them by the payment or satisfaction of the amount recovered against such defendant.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 478.

Sec. 451. **Heirs of devisees, liability for debts.** Heirs and devisees are liable to an action by a creditor of a deceased person to recover the debt of their ancestor or testator to the extent of the value of any real property inherited by or devised to them. If such action be against the heirs, all the heirs who are liable shall be made parties to the action.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 479.

Sec. 452. **Exceptions to such liability.** But the heirs are not liable for the debt, unless it appear that the personal assets of the deceased were insufficient to discharge it, or that after due proceedings the creditor has been unable to collect the debt from the personal representatives of the deceased, or from his next of kin or legatees. If the personal assets were sufficient to pay a part of the debt, or in case a part thereof shall have been collected, the heirs of such deceased person are liable for the residue.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 480.

Sec. 453. **Previous section not to affect liability, when.** The section last preceding shall not affect the liability of heirs for a debt of their ancestor where such debt was by his will expressly charged exclusively on the real properties descended to such heirs, or where such debt is by the will expressly

directed to be paid out of the real property descended before resorting to the personal property.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 481.

Sec. 454. **Preference of debts.** In cases where the next of kin, legatees, heirs, and devisees are liable for the debts of their ancestors, as herein provided, they shall be liable therefor without other priority or preference than such ancestors would be. The word "debt," as used in this chapter, shall be construed to include all claims for the payment of money, which survive against the personal representatives of the deceased, as provided in section four hundred and forty-four.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 482.

Sec. 455. **Enforcement of decree against heir or devisee.** A judgment against an heir or devisee on account of the debt of his ancestor or testator may be enforced by execution against the real property shown to have descended to the heir or devisee, and not otherwise. Such judgment shall have preference as a lien on such real property to any judgment or decree obtained against such heir or devisee on account of a debt or demand due in his own right.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 483.

Sec. 456. **Personal liability of heirs or devisees.** When it appears in the action that before the commencement thereof the heir or devisee has aliened the real property descended to him, or any part thereof, he shall be personally liable for the value of the property so aliened, and a judgment may be given against him therefor, to be enforced by execution, as if the judgment were for his own debt. No real property aliened in good faith and for a valuable consideration by an heir or devisee before action commenced against him is liable to an execution for the debt of his ancestor or testator, or in any manner affected by the judgment therefor against such heir or devisee.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 484.

Sec. 457. **Decree against several heirs or devisees.** In an action against several heirs jointly, or several devisees jointly, the amount which the plaintiff recovers must be apportioned among all the heirs of the ancestor or devisees of the testator in proportion to the value of the real property descended or devised, and such proportion only can be recovered of each heir or devisee.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 485.

Sec. 458. **Devisees not liable where there are assets.** A devisee shall not be liable to the creditor of his testator unless it appear that the personal assets of the testator and the real property descended to his heirs were insufficient to discharge the debt, or unless it appear that after due proceedings the creditor has been unable to recover the debt, or any part thereof, from the personal representatives of the testator or from his next of kin, legatees, or heirs.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 486.

Sec. 459. **Liable for deficiency only.** In either of the cases specified in the section last preceding, the amount of the deficiency of the personal assets, and of the real property descended, to satisfy the debt of the plaintiff, or the amount which such plaintiff may have failed to recover from the personal representatives of the testator, his next of kin, legatees, and heirs, may be recovered of the devisees of such testator, to the extent of the value of the real property devised to them respectively.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 487.

Sec. 460. **When previous sections not applicable.** The two sections last preceding shall not affect the liability of devisees for a debt of their testator where such debt was by his will expressly charged exclusively upon the real property devised, or by the terms of the will made payable by the devisee, or out of the real property devised, before resorting to the personal property or to any other real property descended or devised.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 488.

CHAPTER FORTY-FIVE.

ACTIONS TO DECLARE VOID OR DISSOLVE THE MARRIAGE CONTRACT

Sec.
461. Husband or wife may maintain action.
462. What marriages absolutely void.
463. What marriages void when so declared.
464. At whose action marriages declared void.
465. At whose action marriages declared voidable.
466. Action to declare marriage valid.
467. For what causes marriages may be dissolved.
468. Residence of parties.
469. Same.
470. Pleas in bar by defendant.
471. Maintenance and custody of children pending action.
472. Judgment for maintenance for the custody of children.
473. Power of court to modify decree.
474. Right to remarry.

Sec. 461. **Husband or wife may maintain suit.** A husband or wife may maintain an action of an equitable nature against the other for the dissolution of the marriage contract, or to have the same declared void, as provided in this chapter.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 489.

Sec. 462. **What marriages absolutely void.** All marriages which are prohibited by law on account of consanguinity between the parties, or on account of either of them having a former husband or wife then living, shall, if solemnized within the district, be absolutely void.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 490.

Sec. 463. **What marriages voidable only.** When either of the parties to a marriage shall be incapable of making such contract or assenting thereto for want of legal age or sufficient understanding, or when the consent of either party shall be obtained by force or fraud, such marriage shall be void, from the time it is so declared by the decree of a court having jurisdiction thereof.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 491.

Sec. 464. **At whose suit marriages declared void.** A marriage may be declared void from the beginning, at the action of either party, for any of the causes specified in section four hundred and sixty-two, and whether so declared or not shall be deemed and held to be void in any action, or proceeding whatever in which the same may come in question; but a marriage once declared to be valid by the judgment of a court having jurisdiction thereof, in an action for that purpose, can not afterwards be questioned for the same cause directly or otherwise.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 492.

Sec. 465. **When marriages declared voidable.** A marriage shall not be declared void for any of the causes specified in section four hundred and sixty-three, except at the action or claim of the party laboring under the

disability, or upon whom the force or fraud was imposed or practiced; nor at the action or claim of such party if it appears that the parties freely cohabited together as husband and wife after the party had arrived at legal age, acquired sufficient understanding, been restored to reason, freed from the force, or discovered the fraud, as the case may be.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 493.

Sec. 466. **Suit to declare marriage valid.** When either husband or wife shall claim or pretend that the marriage is void or voidable, as provided in sections four hundred and sixty-two and four hundred and sixty-three, the same may be declared valid and lawful at the action of the other; and in such action the court shall have power if the pleadings and proof authorize it, to declare such marriage void from the beginning or from the time of the judgment, or that it is valid and lawful, and binding on the parties thereto.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 494.

Sec. 467. **For what causes marriages may be dissolved.** The dissolution of the marriage contract may be declared at the action of the injured party for either of the following causes:

First. Impotency existing at the time of the marriage and continuing to the commencement of the suit;

Second. Adultery;

Third. Conviction of felony;

Fourth. Willful desertion for the period of two years;

Fifth. Cruel and inhuman treatment calculated to impair health or endanger life;

Sixth. Habitual gross drunkenness contracted since marriage, and continuing for one year prior to the commencement of the action.

Laws Oreg., Feb. 21, 1887; Hill's Ann. Laws, s. 495; Rickard v. Rickard, 9 Oreg., 168; McBee v. McBee, 22 Oreg., 329; Crow v. Crow, 29 Oreg., 392; Ryan v. Ryan, 30 id., 226; Harberger, 16 id., 327; Bickley v. Bickley, 23 id., 226; Sisemore v. Sisemore, 17 id., 542; Munroe v. Munroe, 20 id., 579; Hall v. Hall, 9 Oreg., 452; Taylor v. Taylor, 11 id., 303; Cline v. Cline, 10 id., 474.

Sec. 468. **Residence of parties.** When a marriage has been solemnized in the district, an action may be maintained to declare it void if the plaintiff is an inhabitant of the district at the commencement of the action. If the marriage has not been solemnized in the district, such action can only be maintained when the plaintiff has been an inhabitant thereof for three years prior to the commencement of the action.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 496.

Sec. 469. **Same.** In an action for the dissolution of the marriage contract, the plaintiff therein must be an inhabitant of the district at the commencement of the action and for three years prior thereto, which residence shall be sufficient to give the court jurisdiction without regard to the place where the marriage was solemnized or the cause of action arose.

Laws Oreg., Dec. 20, 1865; Hill's Ann. Laws, s. 497.

Sec. 470. **Pleas in bar by defendant.** In an action for the dissolution of the marriage contract on account of adultery, the defendant may admit the adultery and show in bar of the suit either—

First. That the act was committed by the procurement or with the connivance of the plaintiff; or

Second. That the act had been expressly forgiven, or impliedly so, by the voluntary cohabitation of the parties after knowledge thereof; or

Third. That the plaintiff has been guilty of adultery also, without the

procurement or connivance of the defendant, and not forgiven as provided in subdivision second of this section; or

Fourth. That the action has not been commenced within one year after the discovery of the act by the plaintiff.

When the action is for any of the causes specified in subdivisions third, fourth, fifth or sixth of section four hundred and sixty-seven, the defendant may admit the charge and show in bar of the action that the act was committed by the procurement of the plaintiff, or that it has been expressly forgiven, and in case the suit is founded on subdivision third of the section four hundred and sixty-seven, the defendant may also show in bar thereof that the action was not prosecuted within one year after the same occurred to the plaintiff.

Laws Oreg., Feb. 21, 1887; Hill's Ann. Laws, s. 498; Dodd v. Dodd, 14 Oreg., 338.

Sec. 471. **Maintenance and custody of children pending suit.** After the commencement of an action, and before a judgment therein, the court or judge thereof may, in its discretion, provide by order as follows:

First. That the husband pay, or secure to be paid, to the clerk of the court, such an amount of money as may be necessary to enable the wife to prosecute or defend the action, as the case may be;

Second. For the care, custody, and maintenance of the minor children of the marriage during the pendency of the action;

Third. For the freedom of the wife from the control of the husband during the pendency of the action, and the court may restrain either or both parties from disposing of the property of either party pending the action.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 500; Smith v. Smith, 3 Oreg., 363; Newhouse v. Newhouse, 14 id., 290.

Sec. 472. **Judgment for maintenance, etc.** Whenever a marriage shall be declared void or dissolved, the court shall have power to further decree as follows:

First. For the future care and custody of the minor children of the marriage, as it may deem just and proper, having due regard to the age and sex of such children, and unless otherwise manifestly improper, giving the preference to the party not in fault.

Second. For the recovery of the party in fault, and not allowed the care and custody of such children, such an amount of money, in gross or in installments, as may be just and proper for such party to contribute towards the nurture and education thereof;

Third. For the recovery of the party in fault such an amount of money, in gross or in installments, as may be just and proper for such party to contribute to the maintenance of the other;

Fourth. For the delivery to the wife, when she is not the party in fault, of her personal property in the possession or control of the husband at the time of giving the judgment;

Fifth. For the appointment of one or more trustees to collect, receive, expend, manage, or invest, in such manner as the court shall direct, any sum of money adjudged for the maintenance of the wife or the nurture and education of minor children committed to her care and custody;

Sixth. To change the name of the wife when she is not the party in fault.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 501; Pittman v. Pittman, 3 Oreg., 553; Jackson v. Jackson, 8 id., 402; Weber v. Weber, 16 Oreg., 163.

Sec. 473. **Power of court to modify decree.** At any time after a judgment is given, the court or judge thereof, upon the motion of either party, on notice shall have power to set aside, alter, or modify so much of the judgment as may provide for alimony or for the appointment of trustees for the care and

custody of the minor children, or the nurture and education thereof, or the maintenance of either party to the action.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 502; Lambert v. Lambert, 16 Oreg., 485.

Sec. 474. **Right to remarry.** A judgment declaring a marriage void or dissolved by the action or claim of either party shall have the effect to terminate such marriage as to both parties, except that neither party shall be capable of contracting marriage with a third person, and if he or she does so contract, shall be liable therefor as if such judgment had not been given, until the action has been heard and determined on appeal, and if no appeal be taken, the expiration of the period allowed by law to take such appeal.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 503.

CHAPTER FORTY-SIX.

OF ACTIONS TO DETERMINE ADVERSE CLAIMS AND BOUNDARIES.

Sec.
475. An action to determine adverse claims.
476. An action to establish boundaries.
477. Pleadings in such action.
478. Mode of proceeding thereafter.
479. Oath and duties of commissioners.
480. Their report.

Sec. 475. **Suit to determine adverse claims.** Any person in possession, by himself or his tenant, of real property, may maintain an action of an equitable nature against another who claims an estate or interest therein adverse to him, for the purpose of determining such claim, estate, or interest.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 504; Coolidge v. Forward, 11 Oreg., 118; Tichenor v. Knapp, 6 id., 205; Goldsmith v. Galilland, 10 Saw., 606; Thompson v. Wolf, 8 Oreg., 454; Starr v. Stark, 1 Saw., 270; Murphy v. Sears, 11 Oreg., 12; Goldsmith v. Smith, 10 Saw., 294; King v. Higgins, 3 Oreg., 406; Teal v. Collins, 9 id., 89; Caulfield v. Clark, 17 Oreg., 473; Edgar v. Edgar, 26 id., 65; O'Hara v. Parker, 27 id., 157.

Sec. 476. **Suit to establish boundary.** In any case where any dispute or controversy exists, or may hereafter arise, between two or more owners of adjacent or contiguous lands in the district, concerning the boundary lines thereof, or the location of the line or lines dividing such lands, either party, or any party to such dispute or controversy, may bring and maintain an action of an equitable nature in the district court of the district, for the purpose of having such controversy or dispute determined, and such boundary line or lines, or dividing lines, ascertained and marked by proper monuments, upon the ground where such line or lines may be ascertained to be, and established in such action.

Laws Oreg., Feb. 21, 1887; Hill's Ann. Laws, s. 506; Bewley v. Chapman, 16 Oreg., 402; Rayburn v. Winant, 16 id., 318; Love v. Morrell, 19 id., 545; King v. Brigham, id., 560; Dice v. McCauley, 22 id., 456; Vandusen v. Shiveley, id., 64; School Dist. v. Price, 23 id., 294; Miner v. Caples, id., 303.

Sec. 477. **Pleadings therein.** The complaint in such action shall be sufficient if it appears therefrom that the plaintiff and defendant or defendants are owners of adjacent lands; that there is a controversy or dispute between the parties concerning their boundary or dividing line or lines, and it shall not be necessary to set forth the nature of such dispute or controversy further than that the plaintiff shall describe the boundary or dividing line as he shall claim it to be. The defendant, in his answer, shall set forth the nature of his claim with reference to the location of the line in controversy.

Laws Oreg., Feb. 21, 1887; Hill's Ann. Laws, s. 507; School Dist. v. Price, supra; Miner v. Caples, supra.

Sec. 478. **Mode of proceeding.** The mode of proceeding under this act shall be analogous to that of other actions of an equitable nature: Provided, At the time of entering the judgment fixing the true location of the disputed boundary or dividing line the court shall appoint three disinterested commissioners, one of whom shall be a practical surveyor, and shall direct the commissioners to go upon the lands of the parties and establish and mark out upon the grounds, by proper marks and monuments, the boundary or dividing line as ascertained and determined by the court in its judgment.

Laws Oreg., Feb. 21, 1887; Hill's Ann. Laws, s. 508; Robinson v. Laurer, 27 Oreg., 315.

Sec. 479. **Oath and duties of commissioners.** Before entering upon the discharge of their duties the commissioners shall make and file their oath in writing, to faithfully and impartially perform their duties as such commissioners, and after designating the line by proper marks and monuments, they shall file, in the court and cause, a report of their doings as such commissioners, and the same shall be, when approved or confirmed by the court, a part of the judgment roll in the cause.

Laws Oreg., Feb. 21, 1887; Hill's Ann. Laws, s. 509.

Sec. 480. **Their report.** The report of the commissioners may be confirmed by the court, upon written motion of either party to such action, whenever it shall appear to the court that the motion was served upon the adverse party two days before the presentation thereof, and that no exceptions have been filed to the report within two days after the service. If exceptions are filed as aforesaid to the report, the exceptions may be heard with the motion to confirm, and the motion may confirm, modify, or set aside the report, as shall seem just, and in the latter case may appoint a new commission or refer the matter to the same commissioners with appropriate instructions.

Laws Oreg., Feb. 21, 1887; Hill's Ann. Laws, s. 510; King v. Brigham, supra.

CHAPTER FORTY-SEVEN.

GENERAL PROVISIONS CONCERNING ACTIONS.

Sec.
481. Lost papers, how supplied.
482. Successive actions.
483. Consolidation of actions.
484. When court has jurisdiction.
485. Jurisdiction over corporations.
486. Exercise of jurisdiction.
487. When majority of referees may act.
488. Computation of time.

Sec. 481. **Lost papers, how supplied.** If an original paper or pleading be lost or withheld by any person, the court or judge thereof may order a verified copy thereof to be filed and used instead of the original.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 512.

Sec. 482. **Successive actions or suits.** Successive actions may be maintained upon the same contract or transaction whenever, after the former action, a new cause of action arises therefrom.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 513.

Sec. 483. **Consolidation of actions or suits.** Whenever two or more actions are pending at one time between the same parties and in the same court, upon causes which might have been joined, the court may, upon the motion of the defendant, order the same to be consolidated. An action is deemed to

be pending from the commencement thereof until its final determination upon appeal, or until the expiration of the period allowed to take an appeal.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 514; Dick v. Kendal, 6 Oreg., 166.

Sec. 484. **When court has jurisdiction.** No natural person is subject to the jurisdiction of the district court of the district unless he appear in the court, or be found within the district, or be a resident thereof, or have property therein; and in the last case only to the extent of such property at the time the jurisdiction attached. But this section is not to be construed to limit the power of the said court to declare a marriage void or a dissolution thereof when the defendant is a nonresident of the district, in the cases provided for in chapter forty-five.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 515.

Sec. 485. **Jurisdiction over corporation.** No corporation is subject to the jurisdiction of the district court of the district unless it appear in the court, or have been created by or under the laws of the district, or have an agency established therein for the transaction of some portion of its business, or have property therein; and in the last case only to the extent of such property at the time the jurisdiction attached.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 516; Aldrich v. Anchor C. Co., 24 Oreg., 32.

Sec. 486. **Exercise of jurisdiction.** When the court has jurisdiction of the parties, it may exercise it in respect to any cause of action, wherever arising, except for the specific recovery of real property situated without the district, or for injury thereto.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 517.

Sec. 487. **When majority of referee may act.** Whenever there is more than one referee, all must meet, but a majority of them may do any act which might be done by all, and whenever any authority is conferred on three or more persons, it may be exercised by a majority of them, upon the meeting of all, unless expressly otherwise provided.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 518.

Sec. 488. **Computation of time.** The time within which an act is to be done, as provided in this code, shall be computed by excluding the first day and including the last, unless the last day fall upon a Sunday, Christmas, or other legal holiday, in which case the last day shall also be excluded. The time for the publication of legal notices shall be computed so as to exclude the first day of publication, and to include the day on which the act or event of which notice is given is to happen or which completes the full period required for publication.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 519; Grant v. Paddock, 30 Oreg., 312.

CHAPTER FORTY-EIGHT.

OF OFFERS TO COMPROMISE AND THE INSPECTION OF WRITINGS.

Sec.
489. Offers to compromise, how accepted, and effect thereof.
Sec.
490. Order for the inspection of papers.

Sec. 489. **Offer to compromise.** The defendant may, at any time before trial, serve upon the plaintiff an offer to allow judgment to be given against him

for the sum, or the property, or to the effect therein specified. If the plaintiff accept the offer, he shall by himself or attorney, endorse such acceptance thereon, and file the same with the clerk before trial, and within three days from the time it was served upon him; and thereupon judgment shall be given accordingly, as in case of a confession. If the offer be not accepted and filed within the time prescribed, it shall be deemed withdrawn, and shall not be given in evidence on the trial; and if the plaintiff fail to obtain a more favorable judgment, he shall not recover costs accruing after the service of the notice of the offer, but the defendant shall recover of him costs and disbursements from the time of such service.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 520.

Sec. 490. **Inspection of books and papers.** The court, or judge thereof, while an action is pending, may order either party to give the other, within a specified time, an inspection and copy, or permission to take a copy, of any book, document, or paper in his possession, or under his control, containing evidence or matters relating to the merits of the action, or the defense therein. If obedience to the order be neglected or refused, the court may exclude the book, document, or paper from being given in evidence, or, if wanted as evidence by the party applying therefor, may direct the jury to presume it to be such as he alleges it to be; and the court may also punish the party so neglecting or refusing as for a contempt. This section is not to be construed to prevent a party from compelling another to produce books, documents, or papers when he is examined as a witness.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 521.

CHAPTER FORTY-NINE.

OF MOTIONS AND ORDERS.

Sec.
491. Order and motion, definition of.
492. Motions, to whom and where made.
493. Notice of motion, time of, and when necessary.
494. Application refused not to be repeated.

Sec. 491. **Order and motion defined.** Every direction of a court or judge made or entered in writing, and not included in a judgment, is denominated an order. An application for an order is a motion.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 522.

Sec. 492. **Motions, where and to whom made.** Motions shall be made to the court or judge as provided in other parts of this code. They shall be made at the place where the action is triable, except when made to a judge of the court before whom the action is pending and without notice, in which case an order may be made by such judge in any part of the district.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 523.

Sec. 493. **Notice of motion.** When a notice of a motion is necessary, it shall be served twenty days before the time appointed for the hearing; but the court, or judge thereof, may prescribe, by order endorsed upon the notice, a shorter time. Notice of a motion is not necessary except when this code requires it, or when directed by the court or judge in pursuance thereof.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 524.

Sec. 494. **Application refused not to be repeated.** If an application for an order, made to a judge of the court in which the action, or proceeding is pend-

ing, be refused in whole or in part, or be granted conditionally, no subsequent application for the same order shall be made to any other judge. A violation of this section is punishable as a contempt, and an order made contrary thereto may be revoked by the judge who made it, or vacated by the court, or judge thereof, in which the action, or proceeding is pending.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 525.

CHAPTER FIFTY.

OF NOTICE AND THE SERVICE AND FILING OF PAPERS.

Sec.
495. Notices to be in writing.
496. Notices and other papers, how served and upon whom.
497. When service may be made by mail; time allowed for distance.
498. How copy deposited and when service deemed to be made.
499. Appearance, how made; defendant not to be heard before appearance.
500. When party absent from the district; when service to be made on attorney.
501. Foregoing provisions not to apply to summons.
502. Notice is valid, though defective in form.
503. Filing of papers.

Sec. 495. **Notices in writing.** Notices shall be in writing, and notices and other papers shall be served on the party or attorney in the manner prescribed in this chapter where not otherwise provided by this code.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 526; Lewis & Dryden v. Paddock, 26 Oreg., 446.

Sec. 496. **Service of notice.** The service or deposit in the post-office, when served by mail, may be made by any person other than the party himself. The proof of service shall be the same as proof of service of a summons, and shall be returned with the original notice, or other paper of which service is made, at the time and place therein prescribed for the hearing or other proceeding to be had thereon. The service may be personal by delivery of a copy of the notice or other paper to the party or attorney on whom the service is required to be made, or it may be as follows:

First. If upon an attorney, it may be made during his absence from his office by leaving the copy with his clerk therein, or with the person having charge thereof; or when there is no person in the office, by leaving it between the hours of six in the morning and nine in the evening in a conspicuous place in the office, or if it be not open to admit of such service, then by leaving it at the attorney's residence with some person of suitable age and discretion.

Second. If upon a party, it may be made by leaving the copy at his residence between the hours of six in the morning and nine in the evening with some person of suitable age and discretion.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 527; Rees v. Rees, 7 Oreg., 78; Byers v. Cook, 13 id., 297; Lindley v. Walls, 2 id., 204; Moffit v. McGrath, 25 Oreg., 478; Le Grand N. Bank v. Blum, 27 id., 215; Bennet v. Minot, 28 id., 343.

Sec. 497. **Service by mail.** Service by mail may be made when the person for whom the service is made and the person on whom it is made reside in different places, between which there is a communication by mail, adding one day to the time of service for every twenty miles of distance between the place of deposit and the place of address.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 528.

Sec. 498. **Deposit of copy in post-office.** In case of service by mail the copy must be deposited in the post-office, addressed to the person on whom it is to be served at his place of residence, and the postage paid. The service shall be deemed to be made on the first day after the deposit in the post-office that the mail leaves the place of deposit for the place of the address, and not otherwise.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 529.

Sec. 499. **Appearance, how made.** A defendant appears in an action when he answers, demurs, or gives the plaintiff written notice of his appearance, and until he does so appear he shall not be heard in such action, or in any proceeding pertaining thereto, except the giving of the undertakings allowed to the defendant in the provisional remedies of arrest, attachment, and the delivery of personal property. When the defendant has not appeared, notice of a motion or other proceeding need not be served upon him, unless he be imprisoned for want of bail, or unless directed by the court, or judge thereof, in pursuance of this title.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 530; Carter v. Koshland, 12 Oreg., 492; Wilson v. Blakeslee, 16 Oreg., 43; Sealy v. Cal. Lum. Co., 19 id., 94; Belknapp v. Charlton, 25 id., 41.

Sec. 500. **Party absent from district; when notice served on attorney.** When a party is absent from the district and has no attorney in the action, service may be made by mail if his residence be known; if not known, on the clerk for him. When a party, whether absent or not from the district, has an attorney in the action, service of notice or other papers shall be made upon the attorney.

Laws Oreg., Dec. 20, 1864; Hill's Ann. Laws, s. 531; Long, C. B. A. v. State Ins. Co., 29 Oreg., 569; Newberger v. Boyce, id., 458; Lewis & Dryden v. Reeves, 26 id., 446.

Sec. 501. **Application of foregoing provisions.** The foregoing provisions do not apply to the service of a summons or other process, nor so much thereof as allows service to be made of any notice or other paper to bring a party into contempt, otherwise than upon such party personally.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 532.

Sec. 502. **Notice valid though defective in form.** A notice or other paper is valid and effectual, although defective either in respect to the title of the action in which it is made, or the name of the court or the parties, if it intelligently refer to such action.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 533.

Sec. 503. **Filing of papers.** All undertakings, affidavits, or other papers required by or provided for in this code shall be filed with the clerk, except when this code otherwise specially provides. A pleading or paper shall be filed by delivering the same to the clerk at his office, who shall endorse upon it the day of the month and the year, and subscribe his name thereto. The clerk shall not be required to receive for filing any paper unless the name of the court, the title of the cause and the paper, and the names of the parties, and the attorney, if there be one, is intelligibly endorsed on the back of it, or unless the contents thereof can be read by a person of ordinary skill.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 534; McDonald v. Crusen, 2 Oreg., 258.

CHAPTER FIFTY-ONE.

OF APPEALS AND WRITS OF ERROR.

Sec.
504. Appeals and writs of error, how taken.
505. What judgments shall be final.
506. When may be taken.
507. From what an appeal may be taken.
508. Laws regulating procedure and practice on appeal.

Sec. 504. **Appeals and writ of error, how taken.** Appeals and writs of error may be taken and prosecuted from the final judgments of the district court for the district of Alaska or any division thereof direct to the Supreme Court of the United States in the following cases, namely: In prize causes and in all cases which involve the construction or application of the Constitution of the United States, or in which the constitutionality of any law of the United States, or the validity or construction of any treaty made under its authority is drawn in question, or in which the constitution or law of a State is claimed to be in contravention of the Constitution of the United States; and that in all other cases where the amount involved or the value of the subject-matter exceeds five hundred dollars the United States circuit court of appeals for the ninth circuit shall have jurisdiction to review by writ of error or appeal the final judgments, orders, of the district court.

Sec. 505. **What judgments shall be final.** The judgments of the circuit court of appeals shall be final in all cases coming to it from the district court, but whenever the judges of the circuit court of appeals may desire the instruction of the Supreme Court of the United States upon any question or proposition of law which shall have arisen in any case pending before the circuit court of appeals on writ of error to or appeal from the district court, judges may certify such question or proposition to the Supreme Court, and thereupon the Supreme Court shall give its instruction upon the questions and propositions certified to it, and its instruction shall be binding upon the circuit court of appeals.

Sec. 506. **When may be taken.** No appeal or writ of error by which any final order or judgment may be reviewed under the provisions of this Act shall be taken or sued out except within one year after the entry of the order or judgment sought to be reviewed.

Sec. 507. **From what an appeal may be taken.** An appeal may be taken to the circuit court of appeals from any interlocutory order granting or dissolving an injunction, refusing to grant or dissolve an injunction, made or rendered in any cause pending before the district court within sixty days after the entry of such interlocutory order. The proceedings in other respects in the district court in the cause in which such interlocutory order was made shall not be stayed during the pendency of such appeal, unless otherwise ordered by the district court.

Sec. 508. **Laws regulating practice on appeal.** All provisions of law now in force regulating the procedure and practice in cases brought by appeal or writ of error to the Supreme Court of the United States or to the United States circuit court of appeals for the ninth circuit, except in so far as the same may be inconsistent with any provision of this Act, shall regulate the procedure and practice in cases brought to the courts, respectively, from the district court for the district of Alaska. The provisions of this chapter shall apply to all cases pending in the district court of Alaska at the time this Act takes effect.

CHAPTER FIFTY-TWO.

OF COSTS AND DISBURSEMENTS.

Sec.
509. Costs; compensation of attorney.
510. When costs allowed to plaintiff.
511. Costs in several actions on same cause.
512. Costs, when allowed to defendant.
513. Disbursements, when allowed.
514. Costs and disbursements in an action of an equitable nature.
515. Who liable for fees.
516. Costs and disbursements, how taxed.
517. When objections made.
518. Effect of such appeal.
519. Fees of referees.
520. Costs on postponement, etc.
521. Plea of tender and effect as to costs.
522. Guardian of infant plaintiff liable.
523. Costs where person sues or defends in the right of another.
524. Costs on review of inferior court.
525. Costs in certain cases.
526. Security for costs.
527. Same subject.
528. Costs on motion, etc.

Sec. 509. Costs; compensation of attorneys. The measure and mode of compensation of attorneys shall be left to the agreement, expressed or implied, of the parties; but there may be allowed to the prevailing party in the judgment certain sums by way of indemnity for his attorney fees in maintaining the action, or defense thereto, which allowances are termed costs.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 548; Jackson v. Siglin, 10 Oreg., 93; Coffin v. Coffin, 2 id., 205; Cross v. Chichester, 4 id., 114; Burt v. Ambrose, 11 id., 26; Peyser v. Cole, id., 39; Wilson S. M. Co. v. Moreno, 6 Saw., 35; Bank v. Ellis, 6 id., 96.

Sec. 510. When costs allowed to plaintiff. Costs are allowed of course to the plaintiff upon a judgment in the district court in his favor in the following cases:

First. In an action for the recovery of the possession of real property, or where a claim of title or interest in real property, or right to the possession thereof, arises upon the pleadings, or is certified by the court to have come in question upon the trial;

Second. In actions for fines and forfeitures, and the actions provided for in chapters thirty-five and thirty-six of this title;

Third. In an action involving an open mutual account, where it appears to the satisfaction of the court that the sum total of such accounts of both parties exceeds one hundred and fifty dollars;

Fourth. In an action for the recovery of personal property;

Fifth. In an action not hereinbefore specified, for the recovery of money or damages, when the plaintiff shall recover fifty dollars or more.

But in an action for assault, battery, false imprisonment, libel, slander, malicious prosecution, criminal conversation, seduction, or breach of promise of marriage, if the plaintiff recovers less than fifty dollars damages, he shall recover no more costs and disbursements than damages; and in an action to recover the possession of personal property, if the plaintiff recover property or the value thereof, as established on the trial, and damages for the detention of the same, in all less than fifty dollars, he shall recover no more costs and disbursements than the sum of such value and damages.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 549; Nurse v. Justus, 6 Oreg., 75; Burt v. Ambrose, 11 id., 30; McDonald v. Evans, 3 id., 474; Crossman v. Lander, id., 495; Bentley v. Jones, 7 id., 108; Wood v. Fitzgerald, 3 id., 568.

Sec. 511. Costs in several actions on same cause. When several actions shall be prosecuted for the same cause of action, against several parties who might have been joined as defendants in the same action, disbursements shall be allowed the plaintiff in each action if he prevail therein; but costs shall not be allowed such plaintiff in more than one of such actions, which shall

be at his election, unless the party or parties prosecuted in such other action or actions shall at the time of the commencement of the previous action have been without the district or secreted therein.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 550.

Sec. 512. **When costs allowed to defendant.** Costs are allowed of course to the defendant in the actions mentioned in section five hundred and eleven unless the plaintiff be entitled to costs therein; and when there are several defendants not united in interest, and making separate defenses by separate answers, costs shall be allowed or not to each of such defendants as if the action were commenced against him separately.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 551; Tyler v. Trustees, 14 Oreg., 485.

Sec. 513. **Disbursements, what constitute.** A party entitled to costs shall also be allowed for all necessary disbursements, including the fees of officers and witnesses, the necessary expenses of taking depositions by commission or otherwise, the expense of publication of the summons or notices, and the postage where the same are served by mail, the compensation of referees, and the necessary expense of copying any public record, book, or document used as evidence on the trial.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 553; Weiss v. Meyer, 24 Oreg., 108.

Sec. 514. **Costs and disbursements in suit.** In an action of an equitable nature costs and disbursements shall be allowed to a party in whose favor a judgment is given in like manner and amount as in other actions, without reference to the amount recovered or the value of the subject of the action, unless the court otherwise directs.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 554; Cole v. Logan, 24 Oreg., 305; Nicklin v. Robertson, 28 id., 278; Lovejoy v. Chapman, 23 id., 571.

Sec. 515. **Fees of officers.** Every officer, witness, or other person required to do or perform any act or service for any party to any action, or proceeding whatever shall be entitled to demand and receive from such party the compensation which the law allows therefor in advance; but a party to any action, or proceeding in any court of justice in the district may, at his option, pay the fees of the officers thereof in advance or give such officers an undertaking with sufficient sureties therefor. The costs and disbursements which a party is entitled to recover from another may be collected by the execution to enforce the judgment as a part thereof. The fees secured to the officers of the court, or either of them, by any party to the judgment may be collected by an execution against the property of such party and that of his sureties in the undertaking therefor. Such officers' execution may issue in the name of the clerk as plaintiff in the writ and for the benefit of all officers of the court to whom fees are so due and secured, whenever an execution might issue to enforce the judgment at the instance of the prevailing party therein.

Laws Oreg., Oct. 20, 1864; Hill's Ann. Laws, s. 555.

Sec. 516. **Clerk to tax costs and disbursements; filing statement thereof.** Costs and disbursements shall be taxed and allowed by the clerk. No disbursements shall be allowed any party unless he shall file with the clerk within five days from the entry of judgment a statement of the same, which statement must be verified except as to fees of officers. A statement of disbursements may be filed with the clerk at any time after five days, but in such case a copy thereof must be served upon the adverse party. A disbursement which a party is entitled to recover must be taxed, whether the same has been paid or not by such party. The statement of disbursements thus filed, and costs, shall be allowed of course unless the adverse party, within two days

from the time allowed to file the same, shall file his objections thereto, stating the particulars of such objections.

Laws Oreg., Oct. 20, 1864; Hill's Ann. Laws, s. 556; Cross v. Chichester, 4 Oreg., 114; Wilson v. City of Salem, 3 id., 482; Hislop v. Moldenhauer, 24 id., 106; Morris v. Rogers, 26 id., 577; Nicklin v. Robertson, supra.

Sec. 517. **Clerk to allow costs; objections and appeal.** When objections are made to the claim for costs and disbursements, the clerk shall forthwith pass upon the same, and endorse upon the verified statement, or append thereto, the charges allowed or disallowed. Any party aggrieved by the decision of the clerk in the allowance of costs or disbursements may appeal from such decision to the court within five days from the date of such decision, by serving a notice of such appeal, and in what particulars, upon the adverse party or his attorney, which appeal shall be heard and determined by such court, or judge thereof, as soon thereafter as convenient.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 557; Thomas v. Thomas, 24 Oreg., 251-260; Willis v. Lance, 28 id., 371; Nicklin v. Robertson, supra.

Sec. 518. **Effect of appeal.** Such appeal shall stay the proceedings as to the costs and disbursements to which the appeal is taken or relates, unless the respondent file with the clerk an undertaking, with one or more sureties, to the effect that if the decision of the clerk be reversed or modified he will make such restitution as the court or judge may direct. The sufficiency of the sureties in the undertaking may be excepted to by the appellant, and they be required to justify in like manner and with like effect as in an ordinary undertaking for an appeal.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 558.

Sec. 519. **Fees of referees.** The fees of referees shall be four dollars per day to each for every day spent in the business of the reference, but the parties may agree in writing upon any other rate of compensation, and thereupon such rates shall be allowed.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 559.

Sec. 520. **Costs of postponements and other applications.** Upon an application to postpone a trial, the payment to the adverse party of a sum, not exceeding ten dollars, as costs may be imposed by the court as a condition of granting the postponement, and in all cases where this code authorizes a court or judge to allow a party to do any act in an action, or proceeding upon terms, such court or judge may, as a condition of such allowance, impose upon such party the payment of a like sum as costs.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 560.

Sec. 521. **Tender, effect as to costs.** When in any action for the recovery of money or damages only the defendant shall allege in his answer that before the commencement thereof he tendered to the plaintiff a certain amount of money in full payment or satisfaction of the cause of action, and now brings the same into court and deposits it with the clerk for the plaintiff, if such allegation of tender be found true, and the plaintiff do not recover a greater sum than the amount so tendered, he shall not recover costs off the defendant, but the defendant shall recover them off him.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 561; Jacobs v. Oren, 30 Oreg., 593.

Sec. 522. **Guardian of infant plaintiff liable for costs.** When costs or disbursements are adjudged against an infant plaintiff, the guardian by whom he appeared in the action shall be responsible therefor, as if he were the actual plaintiff in such action, and payment thereof may be enforced against him accordingly.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 562.

Sec. 523. **Costs where person sues in the right of another.** In an action prosecuted or defended by an executor, administrator, trustee of an express trust, or a person expressly authorized by statute to prosecute or defend therein, costs shall be recovered as in ordinary cases, but such costs shall only be chargeable upon or collected off the estate, fund, or party represented, unless the court or judge thereof shall order the same to be recovered off the plaintiff or defendant personally for mismanagement or bad faith in such action or the defense thereto.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 563.

Sec. 524. **Costs on review from inferior court.** When the decision of any officer, tribunal, or court of inferior jurisdiction is brought before a court for review, such review shall, for all the purposes of costs or disbursements, be deemed an appeal to such court upon errors in law, and costs therein shall be allowed and recovered accordingly.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 564.

Sec. 525. **Costs where public corporation is party, etc.** In all actions prosecuted or defended in the name and for the use of any public corporation in the district the public corporation shall be liable for and may recover costs in like manner and with like effect as in the case of natural persons. When the action is upon the information of any natural person, he shall be liable in the first instance for the defendant's costs; and such costs shall not be recovered from the United States until after execution issued therefor against such person and returned unsatisfied in whole or in part.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 565.

Sec. 526. **Security for costs.** The attorney of a plaintiff who resides out of the district, or is a foreign corporation, against whom costs are adjudged in favor of the defendant, is liable to such defendant therefor; and if he neglect to pay the same upon the information of such defendant, shall be punished as for a contempt. The attorney may relieve or discharge himself from such liability by filing an undertaking at the commencement of the action, or at any time thereafter before judgment, for the payment to the defendant of the costs and disbursements that may be adjudged to him, executed by one or more sufficient sureties.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 566.

Sec. 527. **Same subject.** The sureties in such undertaking shall possess the qualifications of sureties in an undertaking for bail on arrest, and their sufficiency may be excepted to by the defendant at any time within five days from notice of filing the same, and if so, they shall justify in an amount not less than two hundred dollars, in like manner and with like effect as such sureties for bail on arrest. Until the time for excepting to the sufficiency of the sureties has expired, or if excepted to, until they be found sufficient, the attorney is liable as if no undertaking had been given. A deposit of two hundred dollars, or other sum which the court or judge may direct, with the clerk may be made in lieu of such undertaking.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 567.

Sec. 528. **Costs on motions and in cases not otherwise provided for.** A sum not exceeding five dollars as costs may be allowed to the prevailing party on a motion, in the discretion of the court, and may be absolute or directed to abide the event of the action. In any action, or proceeding as to which the allowance and recovery of costs may not be provided for in this title, costs may be allowed or not, according to the measure herein prescribed, and apportioned among the parties, in the discretion of the court.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 568.

CHAPTER FIFTY-THREE.

OF THE RECORDS AND FILES OF COURT.

Sec.
529. Records of court, what constitute.
530. Register, how kept.
531. Journal, what to be entered therein.
532. Judgment docket, how arranged.
533. Execution docket, how kept.
534. Fee book, what to be entered therein.
535. Final record, what to be recorded therein.
536. Jury book, how kept.
537. Files of the court, what are.
538. Custody of the records and files.
539. Search and examination of records and files.

Sec. 529. **Records of court, what constitute.** The records of the district court are a register, journal, judgment docket, execution docket, fee book, jury book, and final record.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 569.

Sec. 530. **Register, how kept.** The register is a book wherein the clerk shall enter, by its title, every action, or proceeding commenced in, or transferred or appealed to, the court whereof he is clerk, according to the date of its commencement, transfer, or appeal; and thereafter, until the entry of judgment, note therein, according to the date thereof, the filing or return of any paper or process, or the making of any order, rule, or other direction in or concerning such action, or proceeding.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 570.

Sec. 531. **Journal, what to be entered therein.** The journal is a book wherein the clerk shall enter the proceedings of the court during term time, and such proceedings in vacation as this code specially directs.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 571; Craft v. N. P. R. R. Co., 25 Oreg., 275.

Sec. 532. **Judgment docket, how arranged.** The judgment docket is a book wherein the judgments are docketed, as elsewhere provided in this code. Each page thereof shall be divided into eight columns, and headed as follows: Judgment debtors; Judgment creditors; Amount of judgment; Date of entry in journal; When docketed; Appeal, when taken; Decision on appeal; Satisfaction, when entered.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 572.

Sec. 533. **Execution docket, how kept.** The execution docket is a book wherein the clerk shall note, under the title of every cause, the issue and return of execution, and generally the filing or return of any paper or process, or the making of any order, rule, or other direction therein, from and after the entry of judgment or decree until satisfaction or performance thereof.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 573.

Sec. 534. **Fee book, what to be entered in.** The fee book is one wherein the clerk shall enter, under the title of every cause, against the party to which the service is rendered, the clerk's fees earned, and received or not received, and none other, except as specially directed by this code.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 574.

Sec. 535. **Final record.** The final record is a book wherein the clerk shall record the papers, pleadings, and proceedings in a cause, as elsewhere provided in this code.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 575.

Sec. 536. **Jury book, how kept.** The jury book is one wherein the clerk shall enter the names of the persons attending upon the court at a particular term as grand or trial jurors, the time of the attendance of each, and when discharged or excused, and the amount of fees and mileage earned by each.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 576.

Sec. 537. **Files of court, what are.** The files of the court are all papers or process filed with or by the clerk of the court in any action or proceeding therein or before the judge thereof.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 577.

Sec. 538. **Custody of records and files.** The records and files of the court are to be kept in the clerk's office in the custody of the clerk, and he is responsible for them. They shall not be taken out of the office by anyone, except by the judge of the court or an attorney thereof, when allowed by special order of the court or judge, or some general rule therefor prescribed by the court and entered in the journal.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 578.

Sec. 539. **Search and examination of records and files.** Whenever requested the clerk upon being tendered legal fees therefor shall furnish to any person a certified copy of any portion of such records or files, and no person other than such clerk is entitled to make such copy or to the use of the records or files for such purposes. Whenever requested the clerk shall search such records and files and give a certificate thereof according to the nature of the inquiry.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 579.

CHAPTER FIFTY-FOUR.

GENERAL PROVISIONS CONCERNING SPECIAL PROCEEDINGS.

Sec.
540. Parties to special proceedings, how designated.
Sec.
541. Judgments, orders, and motions.

Sec. 540. **Parties to special proceedings.** The party prosecuting a writ of review, writ of mandamus, writ of habeas corpus, or a proceeding for contempt shall be known as the plaintiff, and the adverse party as the defendant.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 580.

Sec. 541. **Judgments, motions, and orders.** A judgment in a special proceeding is the final determination of the rights of the parties therein. The definition of a motion and an order in an action are applicable to similar acts in a special proceeding.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 581; Forbis v. Inman, 23 Oreg., 68.

CHAPTER FIFTY-FIVE.

OF THE WRIT OF REVIEW.

Sec.
542. Writ of certiorari to be known as writ of review.
543. Who may prosecute.
544. By whom allowed and how applied for.
545. When allowed.
546. Undertaking of plaintiff.
547. To whom directed.
548. Stay of proceedings; when returnable.
549. When and by whom writ issued; how served.
550. Incomplete return; limitation of writ.
551. Power of court to review.

Sec. 542. **Writ of review or certiorari.** The writ formerly known as the writ of certiorari is known in this title as the writ of review.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 582.

Sec. 543. **Who may prosecute.** Any party to any process or proceeding before or by any inferior court, officer, or tribunal may have the decision or determination thereof reviewed for errors therein as in this chapter prescribed. Upon a review, the court may review any intermediate order involving the merits necessarily affecting the decision or determination sought to be reviewed.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 583.

Sec. 544. **By whom allowed.** The writ shall be allowed by the district court or judge thereof, upon the petition of the plaintiff, describing the decision or determination sought to be reviewed with convenient certainty, and setting forth the errors alleged to have been committed therein. Such petition shall be signed by the plaintiff or his attorney, and verified by the certificate of an attorney of the court, to the effect that he had examined the process or proceeding and the decision or determination therein, and that the same is erroneous, as alleged in the petition.

Laws Oreg., Oct. 24, 1892; Hill's Ann. Laws, s. 584; South Oreg. Co. v. Coos Co., 30 Oreg., 250.

Sec. 545. **When allowed.** The writ shall be allowed in all cases where there is no appeal or other plain, speedy, and adequate remedy, and where the inferior court, officer, or tribunal in the exercise of judicial functions appears to have exercised such functions erroneously, or to have exceeded it or his jurisdiction, to the injury of some substantial right of the plaintiff.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 585; Hill v. State, 23 Oreg., 446; White v. Allen, 3 id., 104; Evans v. Christian, 4 id., 375; Seller v. Corvallis, 5 id., 273; Schiratt v. Phillippi, 3 id., 484; Canonville & G. R. R. Co. v. Douglass Co., 5 id., 281; Douglass Co. R. Co. v. Douglass Co., 6 id., 299; Poppleton v. Yamhill Co., 8 id., 337; Thompson v. Multnomah Co., 2 id., 34; Long v. Sharp, 5 id., 438; Burnett v. Douglass Co., 4 id., 388; Rhea v. Umatilla Co., 2 id., 298.

Sec. 546. **Undertaking of plaintiff.** Before allowing the writ, the court or judge shall require the party applying therefor to give an undertaking, with one or more sureties, subject to its or his approval, in the amount to be fixed by it or him, conditioned that he will perform the judgment or decision sought to be reviewed in case the district court shall so order, and judgment may be given by said court against the applicant and his surety or sureties in case the judgment or decision sought to be reviewed shall be affirmed for the amount thereof, and the costs of said proceeding.

Laws Oreg., Oct. 20, 1864; Hill's Ann. Laws, s. 586.

Sec. 547. **To whom directed.** The writ shall be directed to the court, officer, or tribunal whose decision or determination is sought to be reviewed, or to the clerk or other person having the custody of its records or proceedings, requiring it or them to return the writ to the district court, within a time therein specified, with a certified copy of the record or proceedings in question annexed thereto, that the same may be reviewed by such district court, and requiring the defendant to desist from further proceedings in the matter to be reviewed.

Laws Oreg., Oct. 24, 1882; Hill's Ann. Laws, s. 587; Tyler v. State, 28 Oreg., 238; Johns v. Marian Co., 4 id., 46.

Sec. 548. **Stay of proceedings.** The words in the writ requiring the stay of proceedings may be inserted or omitted in the discretion of the court or judge issuing the same, and the proceedings shall be stayed or not accordingly. The writ shall be made returnable at the next term of the district court, or in vacation, and if the latter, the same may be tried and judgment given therein, by the judge thereof, in like manner and with like effect as in term time.

Laws Oreg., Oct. 24, 1882; Hill's Ann. Laws, s. 588.

Sec. 549. **When and how issued and served.** Upon the filing of the order allowing the writ, and the petition and undertaking of the plaintiff, the clerk shall issue the writ, according to the direction of the order. The writ shall be served by delivering a copy of the original to the opposite party in the action or proceeding sought to be reviewed, at least ten days before the return of the original writ, and may be served by an officer or person authorized to serve a summons, who shall indorse on the original writ the manner of service thereof.

Laws Oreg., Oct. 21, 1876; Hill's Ann. Laws, s. 589.

Sec. 550. **Incomplete return; limitation.** If the return to the writ be incomplete, the court may order a further return to be made. In no case shall a writ be allowed unless the application therefor be made within six months from the date of the decision or determination complained of.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 590; South Oreg. Co. v. Coos Co., 30 Oreg., 250.

Sec. 551. **Power of court; appeal.** Upon the review, the court shall have power to affirm, modify, reverse, or annul the decision or determination reviewed, and, if necessary, to award restitution to the plaintiff, or, by mandate, direct the inferior court, officer, or tribunal to proceed in the matter reviewed according to its decision. From the judgment of the district court on review, an appeal may be taken in like manner and with like effect as from a judgment of such district court in an action.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 591.

CHAPTER FIFTY-SIX.

OF THE WRIT OF MANDAMUS.

Sec.
552. Mandamus to be known as in this chapter.
553. To whom writ may issue; not to control judicial discretion.
554. How writ applied for and by whom allowed and issued.
555. How directed and served.
556. Either alternative or peremptory; what to contain.

Sec.
557. When peremptory writ shall be issued in first instance.
558. When defendant may show cause and how.
559. If defendant fail to show cause, peremptory writ to issue.
560. Pleadings and mode of proceeding therein.
561. Recovery of damages.
562. Recovery of damages a bar to other suit or action.
563. When court may impose fine upon defendant.
564. How tried.
565. Appeal from judgment of district court.

Sec. 552. **Writ of mandamus.** The writ of mandamus is known in this code as prescribed and regulated in this chapter.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 592.

Sec. 553. **To whom may issue; not to control judicial discretion.** It may be issued to any inferior court, corporation, board, officer, or person, to compel the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station. But though the writ may require such court, corporation, board, officer, or person to exercise its or his judgment, or proceed to the discharge of any of its or his functions, it shall not control judicial discretion. The writ shall not be issued in any case where there is a plain, speedy, and adequate remedy in the ordinary course of the law.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 593; Simmons v. Thompson, 23 Oreg., 215; Oregon City v. Moore, 30 Oreg., 221; McElvain v. Bradshaw, id., 569; Durham v. Monumental G. & S. M. Co., 9 id., 41; Bell v. Lappins, 3 id., 55; Kendall v. U. S., 12 Pet., 524; Habershaw v. Sears, 11 Oreg., 431; Smith v. King, 14 id., 10; Warner v. Myers, 3 id., 218; 4 id., 71.

Sec. 554. **How applied for and by whom allowed.** The writ shall be allowed by the court, or judge thereof, upon the petition, verified as a complaint in an action, of the party beneficially interested. It may be allowed, with or without notice to the adverse party, as in the case of a writ of review. Upon the filing of the petition and order of allowance, the writ shall be issued by the clerk in accordance therewith.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 594.

Sec. 555. **How directed and served.** The writ shall be directed to the court, corporation, board, officer, or person mentioned or designated in the order of allowance, and may be served thereon by any officer or person authorized to serve a summons, by delivery of a copy of the original to such officer or person, or to any member of such court, or to any officer of such corporation upon whom this code authorizes a summons to be served. The proof of service shall be the same as in a writ of review, and obedience to the writ may be enforced in such manner as the court or judge thereof shall direct.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 595.

Sec. 556. **Writ either peremptory or alternative.** The writ is either alternative or peremptory. When it is alternative, it shall state concisely the facts according to the petition, showing the obligation of the defendant to perform the act, and his omission to perform it, and command him that immediately after the receipt of the writ, or at some other specified time, he do the act required to be performed, or show cause before the court or judge thereof by whom the writ was allowed, at a time and place therein specified, why he has not done so; and that he then and there return the writ, with his certificate annexed, of having done as he is commanded, or the cause of his omission thereof. When peremptory, the writ shall be in similar form, except that the words requiring the defendant to show cause why he has not done as commanded, and to return the cause therefor, shall be omitted.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 596.

Sec. 557. **When peremptory writ shall be issued.** When the right to require the performance of the act is clear, and it is apparent that no valid excuse can be given for not performing it, a peremptory mandamus shall be allowed in the first instance; in all other cases the alternative writ shall be first issued.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 597.

Sec. 558. **Defendant may show cause.** On the return day of the alternative writ, or such further day as the court or judge thereof may allow, the defendant on whom the writ shall have been served may show cause by demurrer or answer to the writ in the same manner as to a complaint in an action.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 598.

Sec. 559. **Peremptory mandamus, issuance of.** If the defendant do not show cause by demurrer or answer, a peremptory mandamus shall be allowed against him. If the answer contain new matter, the same may be demurred or replied to by the plaintiff within such time as the court or judge may prescribe. If the replication contain new matter, the same may be demurred to by the defendant within such time as the court or judge may prescribe, or he may countervail such matter on the trial or other proceedings by proof, either in direct denial or by way of avoidance.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 599.

Sec. 560. **Pleadings and mode of proceeding.** The pleadings in the proceeding by mandamus are those mentioned in the two sections last preceding. They are to have the same effect, and to be construed and may be amended in the same manner as pleadings in an action. Either party may move to strike out, or be allowed to plead over after motion or demurrer allowed or disallowed, and the issues joined shall be tried and the further proceedings thereon had in like manner and with like effect as in an action.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 600.

Sec. 561. **Recovery of damages.** If judgment be given for the plaintiff, he shall recover the damages which he shall have sustained by reason of the premises, to be ascertained in the same manner as in an action, together with costs and disbursements, and a peremptory mandamus shall be awarded without delay.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 601.

Sec. 562. **Recovery as a bar.** A recovery of damages by virtue of this chapter against a party who shall have made a return to a writ of mandamus is a bar to any other action against the same party for the same cause.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 602.

Sec. 563. **When court may impose fine.** Whenever a peremptory mandamus is directed to a public officer or body commanding the performance of any public duty specially enjoined by law, if it appear to the court or judge thereof that such officer or any member of such body has without just excuse refused or neglected to perform the duty so enjoined, the court or judge may imprison or impose a fine, not exceeding one thousand dollars, upon every such officer or member of such body for each refusal.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 603; Burgtorf v. Dentley, 27 Oreg., 270.

Sec. 564. **How tried.** In the district court the writ may be made returnable either in term time or vacation, and if the latter, may be tried and de-

termined before the judge thereof in like manner and with like effect as in term time.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 605.

Sec. 565. **Appeal.** From the judgment of the district court, or judge thereof, refusing to allow a mandamus, or directing a peremptory mandamus, an appeal may be taken in like manner and with like effect as in an action.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 606.

CHAPTER FIFTY-SEVEN.

OF THE WRIT OF HABEAS CORPUS.

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Sec. 566. **Who may prosecute.** Every person imprisoned, or otherwise restrained of his liberty, within the district, under any pretense whatsoever, except in the cases specified in the next section, may prosecute a writ of habeas corpus according to the provisions of this chapter, to inquire into the cause of such imprisonment or restraint, and if illegal to be delivered therefrom.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 607; Merriman v. Morgan, 7 Oreg., 68; Pomeroy v. Lappius, 9 id., 363.

Sec. 567. **Who not entitled to prosecute writ.** Persons properly imprisoned or restrained by virtue of the legal judgment of a competent tribunal of civil or criminal jurisdiction, or by virtue of an execution regularly and law-

fully issued upon such judgment or decree, shall not be allowed to prosecute the writ.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 608.

Sec. 568. **By whom allowed.** The writ shall be allowed by the court, or the judge thereof, upon the petition of the party for whose relief it is intended, or by some other person in his behalf, signed and verified by the oath of the petitioner, to the effect that he believes it to be true.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 609.

Sec. 569. **Petition for writ, what it shall contain.** The petition shall state in substance—

First. That the party in whose behalf the writ is applied for is imprisoned or restrained of his liberty, the place where, and officer or person by whom he is imprisoned or restrained, naming both parties, if their names be known, or describing them, if not known;

Second. That such person is not imprisoned or restrained by virtue of any order, judgment, or process specified in section five hundred and sixty-seven;

Third. The cause or pretense of such imprisonment or restraint, according to the best knowledge or belief of the petitioner;

Fourth. If the imprisonment or restraint be in virtue of any order, warrant, or process, a copy thereof shall be annexed to the petition, or it must be alleged that, by reason of the removal or concealment of the party before the application, a demand of such copy could not be made, or that such demand was made, and the legal fees therefor tendered to the person having the party in his custody, and that a copy was refused;

Fifth. If the imprisonment or restraint be alleged to be illegal, in what the alleged illegality consists;

Sixth. That the legality of the imprisonment or restraint has not been already adjudged upon a prior writ of habeas corpus to the knowledge or belief of the petitioner.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 610.

Sec. 570. **Writ, when allowed.** The court or judge to whom the petition is presented must allow the writ without delay, unless it appears from the petition itself, or from the documents annexed thereto, that the person for whose relief it is intended is by the provisions of this chapter prohibited from prosecuting the writ. Upon the filing of the petition and the order of allowance with the clerk, the clerk shall issue the writ immediately in accordance therewith.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 611.

Sec. 571. **What writ shall contain.** The writ shall command the defendant to produce the person imprisoned or restrained, by whatsoever name he may be charged or called, and certify and return therewith the time and cause of his imprisonment or restraint, before the court or judge allowing the writ, at a time and place therein specified, or immediately after the receipt of the writ, to do and receive what shall then and there be considered concerning the person so imprisoned or restrained; or when it appears by the petition and documents thereto annexed, that the cause or offense for which the person is imprisoned or restrained is not bailable, the production of the party may be dispensed with, though such production be prayed for in the petition, and the writ issued accordingly.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 612.

Sec. 572. **Not to be disobeyed for want of form; what is sufficient.** The writ shall not be disobeyed for any defect of form. It is sufficient—

First. If the officer or person having the custody of the party imprisoned or restrained be designated either by his name of office, if he have any, or by his own name, or if both such names be unknown or uncertain, he may be described by an assumed appellation; and anyone who may be served with the writ is to be deemed the officer or person to whom it was directed, although it may be directed to him by a wrong name or description, or to another person;

Second. If the person who is directed to be produced be designated by name, or if his name be uncertain or unknown, he may be described in any other way, so as to designate the person intended.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 613.

Sec. 573. Return of writ. The officer or person upon whom the writ shall have been duly served shall state in his return, plainly and unequivocally—

First. Whether he has or has not the party in his custody or power or under his restraint, and if he have not, whether he has had the party in his custody or under his power or restraint at any and what time prior or subsequent to the date of the writ;

Second. If he have the party in his custody or power, or under his restraint, the authority and true cause of such imprisonment or restraint, setting forth the same at large;

Third. If the party be detained by virtue of any writ, warrant, or other written authority, a copy thereof shall be annexed to the return, and the original shall be produced and exhibited on the return of the writ to the court or judge before whom the same is returnable.

Fourth. If the person upon whom such writ shall have been served shall have had the party in his power or custody or under his restraint at any time prior or subsequent to the date of the writ, but has transferred such custody or restraint to another, the return shall state particularly to whom, at what time, for what cause, and by what authority such transfer took place. The return shall be signed by the person making the same, and, except where such person shall be a sworn public officer and shall make his return in his official capacity, it shall be verified by oath.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 614.

Sec. 574. Person to be produced. The person or officer on whom the habeas corpus shall have been served shall also bring the body of the person in his custody, according to the command of such writ, except in the case of the sickness of such person, as hereinafter provided.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 615.

Sec. 575. Warrant, how issued in case of refusal to obey writ. If the person upon whom such writ shall have been duly served shall refuse or neglect to obey the same by producing the party named in such writ and making a full and explicit return thereto within the time required, and no sufficient excuse be shown, it shall be the duty of the court or judge before whom such writ shall have been made returnable, upon due proof of the service thereof, forthwith to issue a warrant against such person, directed to the marshal, and commanding him forthwith to apprehend such person and bring him immediately before such court or judge; and on such person being so brought, he shall be committed to close custody until he shall make return to such writ and comply with any order that may be made in relation to the person for whose relief such writ shall have been issued.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 616.

Sec. 576. If marshal neglects, to whom warrant may issue. If the marshal or any deputy shall have neglected to return such writ, the warrant may be

directed to any other person to be designated therein, who shall have full power to execute the same, and such marshal or deputy upon being brought up may be committed to any jail or other place of imprisonment in the district.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 617.

Sec. 577. **Precept to marshal.** The court or judge by whom any such warrant shall be issued may also, at the same time or afterwards, issue a precept to the marshal or other person to whom such warrant shall have been directed, commanding him to bring forthwith before such court or judge the party for whose benefit such writ shall have been allowed, who shall thereafter remain in the custody of such marshal or person until discharged or remanded.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 618.

Sec. 578. **When cause of imprisonment to be inquired into.** The court or judge before whom the party shall be brought on such writ shall, immediately after the return thereof, proceed to examine into the facts contained in such return and into the cause of the imprisonment or restraint of such party, whether the same shall have been upon commitment for any criminal or supposed criminal matter or not.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 619.

Sec. 579. **Discharge, when granted.** If no legal cause be shown for such imprisonment or restraint, or for the continuation thereof, the court or judge shall discharge such party from the custody or restraint under which he is held.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 620.

Sec. 580. **When party to be remanded.** It shall be the duty of the court or judge forthwith to remand such party if it shall appear that he is legally detained in custody.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 621.

Sec. 581. **Discharge in certain cases.** If it appear on the return that the prisoner is in custody by virtue of an order or civil process of any court legally constituted, or issued by an officer in the course of judicial proceedings before him, authorized by law, such prisoner shall be discharged in either of the following cases:

First. When the jurisdiction of such court or officer has been exceeded, either as to matter, place, sum, or person;

Second. When, though the original imprisonment was lawful, yet by some act, omission, or event which has taken place afterward, the party has become entitled to be discharged;

Third. When the order or process is defective in some matter of substance required by law, rendering such process void;

Fourth. When the order or process, though in proper form, has been issued in a case not allowed by law;

Fifth. When the person having the custody of the prisoner under such order or process is not the person empowered by law to detain him; or,

Sixth. When the order or process is not authorized by any judgment of any court, nor by any provision of law.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 622; Barton v. Sanders, 16 Oreg., 51; Fleming v. Bills, 3 id., 286; Norman v. Zieber, id., 197.

Sec. 582. **Legality of certain judgments and process not to be inquired into.** But no court or judge, on the return of a writ of habeas corpus, has power to inquire into the legality or justice of any order, judgment, or process specified

in section five hundred and sixty-seven, nor into the justice, propriety, or legality of any commitment for a contempt made by a court, officer, or body, according to law, and charged in such commitment, as provided by law.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 623.

Sec. 583. **On commitment for criminal offense, how to proceed.** If it appear that the party has been legally committed for a criminal offense, or if he appear by the testimony offered with the return, or upon the hearing thereof, to be probably guilty of such offense, although the commitment be irregular, he shall forthwith be remanded to the custody or placed under the restraint from which he was taken, if the officer or person under whose custody or restraint he was be legally entitled thereto; if not so entitled, he shall be committed to the custody of the officer or person so entitled.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 624.

Sec. 584. **Until judgment given, how party kept.** Until judgment be given upon the return, the party may either be committed to the custody of the marshal or placed in such care or under such custody as his age and other circumstances may require.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 625.

Sec. 585. **When notice to be given to third person.** When it appears, from the return to the writ, that the party named therein is in custody on an order or process under which another person has an interest in continuing his imprisonment or restraint, no order shall be made for his discharge until it shall appear that the party so interested, or his attorney, shall have had notice of the time and place at which such writ shall have been made returnable.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 626.

Sec. 586. **When notice given to district attorney.** When it appears from the return that the party is imprisoned or restrained on a criminal accusation, the court or judge shall make no order for his discharge until notice of the return is given to the district attorney.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 627.

Sec. 587. **Return may be controverted.** The plaintiff in the proceeding, on the return of the writ, may, by replication, verified as in an action, controvert any of the material facts set forth in the return, or he may allege therein any fact to show, either that his imprisonment or restraint is unlawful, or that he is entitled to his discharge; and thereupon the court or judge shall proceed in a summary way to hear such evidence as may be produced in support of the imprisonment or restraint, or against the same, and to dispose of the party as the law and justice of the case may require.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 628; Ex parte Howe, 26 Oreg., 182.

Sec. 588. **Pleadings on return.** The plaintiff may demur to the return, or the defendant may demur to the new matter, if any, set forth in the replication of the plaintiff, or by proof controvert the same, as upon a direct denial or avoidance. The pleadings herein provided for shall be made within such time as the court or judge shall direct, and they shall be construed and have the same effect as in an action.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 629.

Sec. 589. **Dispensing with production of person.** Whenever, from the sickness or infirmity of the party, he can not without danger be produced, the officer or person in whose custody he is may state that fact in his return to the writ, and if satisfied of the truth of the allegation, and the return be

otherwise sufficient, the court or judge shall proceed to decide on the return and to dispose of the matter in the same manner as if the party had been produced.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 630.

Sec. 590. **Judgment of discharge and dismissal.** If it appear that the party detained is illegally imprisoned or restrained, judgment shall be given that he be forthwith discharged; otherwise judgment shall be given that the proceeding be dismissed and the party remanded.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 631.

Sec. 591. **Precept requiring production of person.** Notwithstanding the issuing of the writ without requiring the production of the person, the court or judge before whom the same was returnable may, before final decision, issue a precept to the officer or other person to whom the writ was directed, requiring the production of the person.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 632.

Sec. 592. **Obedience to judgment of discharge.** Obedience to a judgment for the discharge of a person imprisoned or restrained, pursuant to the provisions of this chapter, may be enforced by the court or judge by proceedings for a contempt. No officer or other person is liable to any action or proceeding for obeying such judgment of discharge.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 633.

Sec. 593. **Person once discharged not again imprisoned for same cause.** No person who has been finally discharged upon a proceeding by habeas corpus, pursuant to the provisions of this chapter, shall be again imprisoned, restrained, or kept in custody for the same cause; but it is not to be deemed the same cause—

First. If he have been discharged from a commitment on a criminal charge, and be afterwards committed for the same offense by the legal order or process of the court, wherein he is bound by recognizance or undertaking to appear, or in which he is indicted or convicted for the same offense; or,

Second. If, after a judgment or discharge for a defect of evidence, or for a material defect in the commitment, in a criminal case, the party be again arrested on sufficient evidence, and committed by legal process for the same offense; or,

Third. If, after a civil action, the party have been discharged for any illegality in the judgment, decree, or process hereinbefore specified, and be afterwards imprisoned for the same cause of action; or,

Fourth. If, in a civil action, he have been discharged from commitment on a writ of arrest, and be afterwards committed on execution, in the same action, or on a writ of arrest in another action, after the dismissal of the first one.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 634.

Sec. 594. **When warrant to issue in lieu of habeas corpus.** Whenever it appears by satisfactory evidence that any person is illegally imprisoned or restrained, and that there is good reason to believe that he will be carried out of the district, or suffer some irreparable injury before he can be relieved by the issuing of a writ of habeas corpus, any court or judge authorized to issue such writ may issue a warrant reciting the facts, and directed to the marshal or any other person therein designated, commanding such officer or person to take such person, and forthwith to bring him before such court or judge, to be dealt with according to law.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 635.

Sec. 595. **Arrest of person having custody of party.** When the proof mentioned in the last section shall also be sufficient to justify an arrest of the person having the party in his custody, as for a criminal offense, committed in the taking or detaining of such party, the warrant may also contain an order for the arrest of such person for such offense.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 636.

Sec. 596. **Warrant, how executed.** Any officer or person to whom such warrant shall be directed shall execute the same by bringing the party therein named and the person who detains him, if so commanded by the warrant, before the court or judge issuing the same; and thereupon the person detaining such party shall make a return in like manner, and the like proceeding shall be had thereon as if a writ of habeas corpus had been issued in the first instance.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 637.

Sec. 597. **Person arrested to be committed or bailed.** If the person having such party in his custody be brought before the court or judge as for a criminal offense, he shall be examined, committed, bailed, or discharged by the court or judge in like manner as in other criminal cases of the like nature.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 638.

Sec. 598. **Penalty for refusing copy of order of process.** Any officer or other person refusing to deliver a copy of any order, warrant, process, or other authority by which he shall detain any person to anyone who shall demand such copy and tender the fees therefor shall forfeit two hundred dollars to the person so detained.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 639.

Sec. 599. **When district attorney may apply for writ.** Whenever a writ of habeas corpus is required in any action or proceeding, civil or criminal, to which the United States is a party, the application therefor may be made by the district attorney, and whenever so issued the court or judge shall state in the order of allowance that it was issued on such application.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 640.

Sec. 600. **Writ, on whom served. Tender of fees and undertakings.** A writ of habeas corpus may be served by the marshal, or by any other person therein designated, at any place within the district, and the service thereof shall not be deemed complete, so as to require the prisoner to be brought up before the court or judge issuing the same, unless the party serving the same shall tender to the person in whose custody the prisoner may be, if such person be a marshal or other officer, the fees allowed by law for bringing up such prisoner; nor unless he shall also enter into an undertaking to such marshal or other officer, as the case may be, in a penalty double the amount of the sum for which such prisoner may be detained, if he be detained for any specific amount of money, and if not, then in such a sum as the judge granting the writ shall direct, not exceeding one thousand dollars, to the effect that such person shall pay the charges for carrying back such prisoner if he shall be remanded, and that such prisoner will not escape by the way, either in going to or returning from the place to which he is taken. If such fees be not paid, or such security be not tendered, the officer to whom the writ is directed shall make return thereto, in the manner required by section five hundred and seventy-three, and shall state therein the reason why such prisoner is not produced, and thereupon the court or judge granting the writ may proceed as if the prisoner were produced. But this section, from

and inclusive of the words "and the service thereof," does not apply to a case wherein the writ is issued on the application of the district attorney.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 641.

Sec. 601. **Writ, how served.** The writ of habeas corpus may be served by delivery of a certified copy of the original to the officer or person to whom it is directed, or, if he can not be found, by leaving such copy at the jail or other place in which the party is imprisoned or restrained, with any under officer or other person having charge for the time of such party.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 642.

Sec. 602. **Same subject.** If the officer or person on whom the writ ought to be served conceal himself, or refuse admittance to the person attempting to serve it, it may be served by affixing it in some conspicuous place on the outside either of his dwelling house or the jail or other place where the party is confined.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 643.

Sec. 603. **Duty to obey writ.** It is the duty of the marshal or other officer upon whom a writ of habeas corpus has been served, whether such writ be directed to him or not, upon payment or tender of the fees allowed by law and the delivery or tender of the undertaking herein prescribed, to obey and return the writ according to the exigency thereof; and it is the duty of every other person upon whom the writ is served, having the custody of the person for whose benefit it is issued, to obey and return it in like manner without requiring the payment of any fees, unless the judgment (payment) of such fees has been required by the court or judge allowing such writ.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 644.

Sec. 604. **When charges for producing party paid by applicant.** Every court or judge allowing a writ of habeas corpus, directed to a person other than the marshal or other officer, may, in its discretion, require, in order to render the service effectual, that the charges of producing the party be paid by the applicant; and in such case the court or judge shall, in the order allowing the writ, specify the amount of such charges, which shall not exceed the fees allowed by law to marshals for similar services.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 645.

Sec. 605. **Proof of service.** The proof of service of the writ of habeas corpus shall be the same as in the service of a summons, except that the same shall be endorsed upon a copy of the writ made by the officer or person serving it, and returned to the clerk who issued the writ.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 646.

Sec. 606. **Within what time return to be made.** If the writ be returnable at a certain time, such return shall be made and the party produced, if required or there be no valid excuse therefor, as herein provided, at the time and place specified therein; if it be returnable forthwith, and the place of return be within twenty miles of the place of service, the return must be made and the party produced within twenty-four hours, and the same time is allowed for every additional twenty miles.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, ss. 641 and 647.

Sec. 607. **The place of hearing.** At any time after the allowance of such writ or warrant by the court or judge thereof, the plaintiff therein or the person applying therefor on his behalf may give notice to the judge issuing the same, and thereupon, if necessary to avoid delay, such judge shall by

order require that the return be made and the party produced before him at such time and place as may be convenient.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 648.

Sec. 608. **Appeals; conclusiveness of judgment.** Any party to a proceeding by habeas corpus, including the United States, when the district attorney appears therein, may appeal from the judgment of the district court refusing to allow such writ or any final judgment therein, either in term time or vacation, in like manner and with like effect as in an action. No question once finally determined upon a proceeding by habeas corpus shall be re-examined upon another or subsequent proceeding of the same kind.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 649.

CHAPTER FIFTY-EIGHT.

OF THE PUNISHMENT OF CONTEMPTS.

Sec.
609. Contempts defined.
610. Punishment for contempt.
611. In presence of court, how punished.
612. In other cases, mode of proceeding.
613. If defendant imprisoned, may be brought up.
614. The United States is plaintiff, when district attorney may prosecute.
615. When defendant bailed: how warrant executed.
616. Bail, how given.
617. Return of warrant, and proceedings on appearance.
618. Determination and sentence.
619. Judgment to indemnify party injured.
620. When party may be imprisoned.
621. Person also liable to indictment.
622. If party do not appear, proceedings thereon.
623. Appeal from judgment.

Sec. 609. **Contempts defined.** The following acts or omissions, in respect to a court of justice, or proceedings therein, are deemed to be contempts of the authority of the court:

First. Disorderly, contemptuous, or insolent behavior toward the judge while holding the court, tending to impair its authority or to interrupt the due course of a trial or other judicial proceeding;

Second. A breach of the peace, boisterous conduct, or violent disturbance, tending to interrupt the due course of a trial or other judicial proceeding.

Third. Misbehavior in office, or other willful neglect or violation of duty, by an attorney, clerk, marshal, or other person appointed or selected to perform a judicial or ministerial service;

Fourth. Deceit, or abuse of the process or proceedings of the court, by a party to an action or special proceeding;

Fifth. Disobedience of any lawful judgment, order, or process of the court;

Sixth. Assuming to be an attorney or other officer of the court, and acting as such without authority in a particular instance;

Seventh. Rescuing any person or property in the custody of an officer by virtue of an order or process of such court;

Eighth. Unlawfully detaining a witness or party to an action or proceeding while going to, remaining at, or returning from the court where the same is for trial;

Ninth. Any other unlawful interference with the process or proceedings of the court;

Tenth. Disobedience of a subpœna duly served, or refusing to be sworn or answer as a witness;

Eleventh. When summoned as a juror in a court, improperly conversing with a party to an action or proceeding to be tried at such court, or with any other person in relation to the merits of such action or proceeding, or receiving a communication from a party or other person in respect to it without immediately disclosing the same to the court;

Twelfth. Disobedience by an inferior tribunal, magistrate, or officer of the lawful judgment, order, or process of a superior court, or proceeding in an action or proceeding contrary to law, after such action or proceeding shall have been removed from the jurisdiction of such inferior tribunal, magistrate or officer. The conduct specified in subdivisions first and second of this section, when committed before a judicial officer, or disobedience of the lawful order or process of such officer made in the cases specified in section seven hundred and eleven, is also to be deemed a contempt of the authority of such officer.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 650; U. S. v. Emerson, 4 Oreg., 188; In re Rob., 9 Saw., 568; disapproved in Rob v. Connolly, 111 U. S., 624; State v. Kaiser, 20 Oreg., 50; Rostel v. Moorat, 19 id., 181; State v. Jacobs, 11 id., 314.

Sec. 610. **Punishment.** Every court of justice and every judicial officer has power to punish contempt by fine or imprisonment, or both. But such fine shall not exceed three hundred dollars nor the imprisonment six months; and when the contempt is not one of those mentioned in subdivisions first and second of the last section, or in subdivision first of section seven hundred and eleven, it must appear that the right or remedy of a party to an action or proceeding was defeated or prejudiced thereby before the contempt can be punished otherwise than by fine not exceeding one hundred dollars.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 651.

Sec. 611. **In presence of court, how punished.** When a contempt is committed in the immediate view and presence of the court or officer, it may be punished summarily, for which an order must be made reciting the facts as occurring in such immediate view and presence, determining that the person proceeded against is thereby guilty of a contempt, and that he be punished as therein prescribed. In other cases of contempt the trial shall proceed upon testimony produced as in criminal cases and the accused shall be entitled to be confronted with the witnesses against him, but such trial shall be by the court, or, in the discretion of the court, upon application of the accused, a trial by jury may be had as in any criminal case.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 652; State v. McKinnon, 8 Oreg., 487; State v. Kaiser, supra.

Sec. 612. **In other cases, mode of proceeding.** In cases other than those mentioned in the section last preceding, before any proceedings can be taken therein the facts constituting the contempt must be shown by an affidavit presented to the court or judicial officer, and thereupon such court or officer may either make an order upon the person charged to show cause why he should not be arrested to answer, or issue a warrant of arrest to bring such person to answer in the first instance.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 653; State v. Crane, 15 Oreg., 148.

Sec. 613. **Defendant may be brought up if in custody.** If the party charged be in the custody of an officer, by virtue of a legal order or process, civil or criminal, except upon a sentence for a felony, an order may be made for the production of such person by the officer having him in custody, that he may answer, and he shall thereupon be produced and held, until an order be made for his disposal.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 654.

Sec. 614. **United States is plaintiff; coplaintiffs.** In the proceeding for a contempt, the United States is the plaintiff. In all cases of public interest, the proceeding may be prosecuted by the district attorney on behalf of the United States; and in all cases where the proceeding is commenced upon the relation of a private party, such party shall be deemed a coplaintiff with the United States.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 655.

Sec. 615. **When bailed, warrant how executed.** Whenever a warrant of arrest is issued, pursuant to this chapter, the court or judicial officer shall direct therein whether the person charged may be let to bail for his appearance upon the warrant or detained in custody without bail, and if he may be bailed, the amount in which he may be let to bail. Upon executing the warrant of arrest, the marshal must keep the person in actual custody, bring him before the court or judicial officer, and detain him until an order be made in the premises, unless the person arrested entitle himself to be discharged as provided in section six hundred and sixteen.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 656.

Sec. 616. **Bail, how given.** The defendant shall be discharged from the arrest upon executing and delivering to the marshal, at any time before the return day of the warrant, an undertaking, with two sufficient sureties, to the effect that the defendant will appear on such return day, and abide the order or judgment of the court or officer thereupon, or pay, as may be directed, the sum specified in the warrant.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 657; State v. Crane, 15 Oreg., 148.

Sec. 617. **Return of warrant.** The marshal shall return the warrant of arrest, and the undertaking, if any, given him by the defendant, by the return day therein specified. When the defendant has been brought up or has appeared, the court or judicial officer shall proceed to investigate the charge by examining such defendant and witnesses for or against him, for which an adjournment may be had from time to time if necessary.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 658.

Sec. 618. **Judgment and sentence.** Upon the evidence so taken the court or judicial officer shall determine whether or not the defendant is guilty of the contempt charged, and if it be determined that he is so guilty, shall sentence him to be punished as provided in this chapter.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 659.

Sec. 619. **Indemnity to party injured.** If any loss or injury to a party in an action or proceeding, prejudicial to his rights therein, have been caused by the contempt, the court or judicial officer, in addition to the punishment imposed for the contempt, may give judgment that the party aggrieved recover off the defendant a sum of money sufficient to indemnify him and to satisfy his costs and disbursements, which judgment, and the acceptance of the amount thereof, is a bar to any action or proceeding by the aggrieved party for such loss or injury.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 660; State v. Crane, supra.

Sec. 620. **Imprisonment until performance.** When the contempt consists in the omission or refusal to perform an act which is yet in the power of the defendant to perform, he may be imprisoned until he shall have performed it; and in such case the act must be specified in the warrant of commitment.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 661.

Sec. 621. **Persons also liable to indictment.** Persons proceeded against according to the provisions of this chapter are also liable to indictment for the

same misconduct, if it be an indictable offense; but the court, before his conviction is had on the indictment, in passing sentence, shall take into consideration the punishment before inflicted.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 662.

Sec. 622. **If party do not appear.** When a warrant of arrest has been returned served, if the defendant do not appear on the return day, the court or judicial officer may issue another warrant of arrest, or may order the undertaking to be prosecuted, or both. If the undertaking be prosecuted, and the aggrieved party join in the action, and the sum specified therein be recovered, so much thereof as will compensate such party for the loss or injury sustained by reason of the misconduct for which the warrant was issued shall be deemed to be recovered for such party exclusively.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 663.

Sec. 623. **Appeal from judgment.** Either party to a judgment in a proceeding for a contempt may appeal therefrom in like manner and with like effect as from a judgment in an action; but such appeal shall not have the effect to stay the proceeding in any other action or proceeding, or upon any judgment, decree, or order therein concerning which or wherein such contempt was committed. Contempts of justices' courts are punishable in the manner specially provided in the procedure before them.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 664.

CHAPTER FIFTY-NINE.

OF THE MEANS OF THE PRODUCTION OF EVIDENCE.

Sec.
624. Subpoena for witness defined.
625. Subpoena, how and by whom issued.
626. Subpoena, when and to whom issued in blank.
627. Subpoena, how served.
628. How served if witness concealed.
629. Proof of service.
630. When witness obliged to attend.
631. Person present compelled to testify.
632. Disobedience to subpoena, how punished.
633. Forfeiture therefor.
634. When warrant may be issued to bring witness.
635. Warrant of arrest or commitment.
636. If witness be a prisoner, how produced or examined.

Sec. 624. **Subpoena for witness defined.** The process by which the attendance of a witness is required is a subpœna. It is a writ directed to a person and requiring his attendance, at a particular time and place, to testify as a witness in a particular action, suit, or proceeding therein specified, on behalf of a particular party therein mentioned. It may also require him to bring with him any books, documents, or other things under his control which he is bound by law to produce in evidence.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 789.

Sec. 625. **How and by whom issued.** The subpœna is as follows:

First. To require attendance before a court of record, or at the trial of an issue therein, or out of such court in an action, suit, or proceeding pending therein, by the clerk of such court;

Second. To require attendance before a commissioner appointed to take testimony by a court of the United States, or any State or Territory, or any foreign country, by any clerk of a court of record, in places within the jurisdiction of such court;

Third. To require attendance before the judge, justice of the peace, or other person authorized by law to take the testimony or affidavit of another, by such judge, justice of the peace, or other person, in the places within their respective jurisdiction.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 790.

Sec. 626. **When issued in blank.** The subpœnas authorized by subdivisions first and second of the last section, upon the request of a party and an attorney of the court, shall be issued by the clerk in blank, and delivered to such party or attorney, who may thereafter fill up such blank with the name of the witness or witnesses that he may desire to be subpœnaed, and cause the same to be served as in this chapter required.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 791.

Sec. 627. **How served.** A subpœna may be served by the party or any other competent person over eighteen years of age. The service is made by reading and showing the original and delivering a copy to the witness personally, giving or offering to him at the same time the fees to which he is entitled for travel to and from the place designated, and one day's attendance there. Such service must be made so as to allow the witness a reasonable time for preparation and travel to the place of attendance.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 792.

Sec. 628. **How served if witness concealed.** The marshal or any deputy or any person specially appointed by him, but none other, is authorized and required to break into any building or vessel in which a witness may be concealed, so as to prevent the service of a subpœna, and serve the same upon such witness.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 793.

Sec. 629. **Proof of service.** Proof of service of a subpœna shall be made in the same manner as in the service of a summons.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 794.

Sec. 630. **Where witness obliged to attend.** A witness is not obliged to attend for oral examination or otherwise at a place distant more than one hundred miles from the place where he resides or at which he may be served with a subpœna; except that in an action or proceeding pending in a court of record the court or judge thereof, upon the affidavit of the party, or some one on his behalf, showing that the testimony of the witness is material and his oral examination important and desirable, may endorse upon the subpœna an order for the attendance of the witness; the service of such subpœna and order, and the payment of legal fees to the witness, are sufficient to require his attendance, if he be served within the district.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 795; Sargent v. Umatilla Co., 13 Oreg., 443; Roberts v. Parish, 17 Oreg., 587.

Sec. 631. **Person present compelled to testify.** A person present in court or before a judicial officer may be required to testify in the same manner as if he were in attendance before such court or officer on a subpœna.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 796.

Sec. 632. **Disobedience to subpœna.** Disobedience to a subpœna, or a refusal to be sworn, or to answer as a witness, or to subscribe an affidavit or deposition when required, may be punished as a contempt by the court or officer before whom he is required to attend or the refusal takes place, and if the witness be a party, his complaint, answer, or reply may be stricken out.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 797.

Sec. 633. **Forfeiture for disobedience.** A witness disobeying a subpœna duly served shall forfeit to the party requiring his attendance the sum of fifty dollars and all damages which he may sustain by the failure of the witness to attend, which forfeiture and damages may be recovered by an action at law.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 798.

Sec. 634. **When warrant may issue to bring witness.** In case of the failure of a witness to attend, the court or officer before whom he is required to attend, upon proof of the due service of the subpœna and tender of his fees, may issue a warrant to the marshal requiring him to arrest the witness and bring him before the court or officer where his attendance was required.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 799.

Sec. 635. **Warrant of arrest or commitment.** Every warrant of commitment issued by a court or officer pursuant to this chapter shall specify therein the cause of the commitment; and if it be for refusing to answer a question, such question shall be stated in the warrant.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 800.

Sec. 636. **Produced or examined.** If the witness be a prisoner, confined in a prison within the district, an order for his examination in the prison upon deposition, or for his temporary removal and production, before a court or officer, for the purpose of being orally examined, may be made as follows:

First. By the court or judge thereof in which the action or proceeding is pending, unless it be a court of a justice of the peace;

Second. By any judge of a court of record, when the action or proceeding is pending in a justice's court, or when the witness' deposition, affidavit, or oral examination is required before a judge or other person out of court.

Third. Such order shall only be made upon the affidavit of the party desiring the order, or some one on his behalf, showing the nature of the action or proceeding, the testimony expected from the witness, and its materiality;

Fourth. If the witness be imprisoned at the place where the action or proceeding is pending, and for a cause other than a sentence for felony, his production may be required; in all other cases his examination shall be taken by deposition.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 801.

CHAPTER SIXTY.

OF THE MODE OF TAKING THE TESTIMONY OF WITNESS.

Sec.
637. How authenticated if taken outside the district.
638. Affidavit, when may be used.
639. When deponent to be produced for cross-examination.
640. Proof of publication by affidavit.
641. Where affidavit may be filed, and effect thereof.

Sec. 637. **How authenticated if taken out of said district.** An affidavit or deposition taken in any State or Territory of the United States, the District of Columbia, or in a foreign country, otherwise than upon commission, must be authenticated as follows before it can be used in the district:

First. It must be certified by a commissioner, appointed by the governor of the district to take affidavits and depositions in such State, Territory, district, or country; or

Second. It must be certified by a judge of a court having a clerk and a seal, to have been taken and subscribed before him at a time and place therein specified, and the existence of the court, the fact that such judge is a member thereof, and the genuineness of his signature shall be certified by the clerk of the court, under the seal thereof.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 807.

Sec. 638. **Affidavit, when may be used.** An affidavit may be used to prove the service of a summons, notice, or other paper in an action or proceeding to obtain a provisional remedy, the examination of a witness, or a stay of proceedings, or upon a motion, and in any other case expressly provided for by law, except as provided in the next section.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 808.

Sec. 639. **When deponent to be used for cross-examination.** Whenever a provisional remedy has been allowed upon affidavit, the party against whom it is allowed may serve upon the party by whom it was obtained a notice, requiring the person making the affidavit to be produced before some officer authorized to administer oaths, therein named, for cross-examination. Thereupon the party to whom the remedy was allowed shall lose the benefit of the affidavit and all proceedings founded thereon, unless within eight days, or such other time as the court or judge thereof may direct, upon a previous notice to his adversary of at least three days, he produce the deponent for examination before the officer mentioned in the notice, or some other of like authority, provided for in the order of the court or judge. Upon such production the deponent may be examined by either party, but a party shall not be obliged to produce a witness for examination as in this section provided, except within the district where the provisional remedy was allowed.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 809.

Sec. 640. **Proof of publication may be made by affidavit.** Proof of the publication of a document or notice required by law, or by an order of court or a judge, to be published in a newspaper, may be made by the affidavit of the printer of the newspaper or his foreman or principal clerk, annexed to a copy of the document or notice, specifying the times when and the paper in which the publication was made. But such affidavit must be made within six months after the last day of publication.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 810.

Sec. 641. **Affidavit of publication, when filed, and effect thereof.** If such affidavit be made in an action or proceeding pending in a court, it may be filed with the clerk thereof; and the same is primary evidence of the facts therein stated.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 811.

CHAPTER SIXTY-ONE.

OF DEPOSITIONS.

Sec.
642. Deposition, when used.
643. Testimony of witness out of the district.
644. When deposition taken of witness within district.

Sec. 642. **Deposition, when required.** In all cases other than those mentioned in section six hundred and thirty-eight, where a written declaration under oath is used, it must be a deposition.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 812.

Sec. 643. **Deposition of witness out of district.** The testimony of a witness out of the district may be taken by deposition in an action, at any time after the service of the summons or the appearance of the defendant, and in a special proceeding at any time after a question of fact has arisen therein.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 813.

Sec. 644. **Deposition of witness in district.** The testimony of a witness in the district may be taken by deposition, in an action, at any time after the service of the summons, or the appearance of the defendant; and in a special proceeding after a question of fact has arisen therein, in the following cases:

First. When the witness is a party to the action or proceeding, by the adverse party;

Second. When the witness' residence is such that he is not obliged to attend in obedience to the subpœna, as provided in section six hundred and thirty;

Third. When the witness is about to go more than one hundred miles beyond the place of trial;

Fourth. When the witness, otherwise liable to attend the trial, is nevertheless too infirm to attend;

Fifth. When the testimony is required upon a motion, or in any other case where the oral examination of the witness is not required.

Laws Oreg., Oct. 28, 1874; Hill's Ann. Laws, s. 814.

CHAPTER SIXTY-TWO.

OF THE MANNER OF TAKING DEPOSITIONS OUT OF THE DISTRICT.

Sec.
645. Testimony of a witness out of the district, how taken.
646. Commission, how and by whom issued.
647. Interrogatories may be annexed.
648. Contents of commission.
649. Trial, when postponed therefor.
650. Deposition taken out of district before commission.
651. Either party may attend or require written interrogatories.

Sec. 645. **Deposition of witness out of district.** The deposition of a witness out of the district may be taken upon commission issued from the court, or without commission before a commissioner appointed by the

governor of the district to take depositions in any State, Territory, or District of the United States, or in any foreign country.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 816.

Sec. 646. **Commission how and by whom issued.** The commission may be issued by the clerk of the court, or by a justice of the peace in a cause in his own court, on the application of either party upon five days' previous notice to the other. It shall be issued to a person agreed upon by the parties, or if they do not agree, to a judge, justice of the peace, notary public, or clerk of a court, selected by the officer issuing it.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 817.

Sec. 647. **Interrogatories may be annexed.** Such interrogatories, direct and cross, as the respective parties may prepare, to be settled by the clerk or justice in a summary manner as to the form thereof, if the parties disagree, may be annexed to the commission, or when the parties agree to that mode, the examination may be without written interrogatories.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 818.

Sec. 648. **Commission, what to contain.** The commission shall authorize the commissioner to administer an oath to the witness and to take his deposition in answer to the interrogatories, or when the examination is to be without them, in respect to the question in dispute, and to certify the deposition to the court in a sealed envelope, directed to the clerk or justice who issued the commission, or other person designated and agreed upon, and forward it to him by mail or other usual channel of conveyance.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 819; Clark v. Ellis, 9 Oreg., 128.

Sec. 649. **When trial postponed for deposition.** A trial or other proceeding shall not be postponed by reason of a commission not being returned, except it appear by affidavit that the testimony of the witness is material and necessary, and that proper diligence has been used to obtain it.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 820.

Sec. 650. **Deposition taken out of district.** The deposition of a witness out of the district, and in any State, Territory, or District of the United States, may also be taken before a commissioner appointed by the governor of the district to take depositions in such State, Territory, or District, upon giving to the adverse party eight days' notice of the time and place of the examination, the name of the commissioner, and the witness, if the distance of the place of examination from the place where the testimony is to be used does not exceed fifty miles, and one day in addition for every additional twenty-five miles.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 821.

Sec. 651. **Either party may attend or require written interrogatories.** Either party may attend upon such examination and examine the witnesses upon oral interrogatories, but if either party, by a written notice to the other within three days from the service of the original notice, require it, it shall be taken upon written interrogatories, to be settled, if not agreed upon, by the same officer and in the same manner as in case of a deposition upon commission; and in such case the deposition shall be taken, certified, and directed by the commissioner in the same manner as a deposition upon commission.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 822.

CHAPTER SIXTY-THREE.

OF THE MANNER OF TAKING DEPOSITIONS IN THE DISTRICT.

Sec.
652. Depositions in the district, when taken, and notice thereof.
653. How taken; either party may attend.
654. Certificate of officer.
655. Deposition, to whom forwarded
Sec.
656. May be used by either party; objections to relevancy or form.
657. Proof before using certain depositions; insufficient notice.
658. Depositions may be read at any time; exclusion of a portion.

Sec. 652. **Deposition of witness within the district.** Either party may take the testimony of a witness in the district by deposition, in the cases allowed by this code, before the clerk of a court of record, or other person authorized to administer oaths, on giving the adverse party previous notice of the time and place of the examination, the name of the officer, and the witness; such notice shall be given at least three days before the day of the examination, if the distance of the place of examination from the residence of the person to whom notice is given does not exceed twenty-five miles, and one day in addition for every additional twenty-five miles, unless the court or judge thereof by order prescribe a shorter time. When a shorter time is prescribed the order shall be served with the notice.

Laws Oreg., Oct. 20, 1874; Hill's Ann. Laws, s. 823.

Sec. 653. **How taken; either party may attend.** Either party may attend upon such examination and examine the witness upon oral interrogatories. The deposition shall be written by the officer taking the same, or by the witness, or by some disinterested person, in the presence and under the direction of such officer. When completed it shall be read to or by the witness, and subscribed by him. Before subscribing it the witness shall be allowed, if he desire it, to correct or explain any statement in the deposition, but such statement, although corrected and explained, shall remain a part of the deposition.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 824.

Sec. 654. **Certificate of officer taking deposition.** The officer taking the deposition shall append thereto his certificate, under the seal of his office, if there be a seal, to the effect that the deposition was taken before him, at a place mentioned, between certain hours of a day or days mentioned, and reduced to writing by a person therein named; that before proceeding to the examination the witness may be duly sworn to tell the truth, the whole truth, and nothing but the truth; that the deposition was read to or by the witness, and then by him subscribed.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 825; Stark v. Ellis, 9 Oreg., 128.

Sec. 655. **Deposition, to whom forwarded.** The officer taking the deposition shall enclose the same in a sealed envelope directed to the clerk of the court or the justice of the peace before whom the action or proceeding is pending, or such other person as may by writing be agreed upon, and deliver or forward the same accordingly by mail or other usual channel of conveyance.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 826.

Sec. 656. **Once taken, may be used by either party.** A deposition taken pursuant to the provisions of this chapter may be used by either party upon the trial or proceeding against any party giving or receiving the notice,

subject to all legal exceptions. But no objections can be made at the trial to the relevancy of the testimony of the form of the interrogatory unless the same appear by the deposition or written interrogatories to have been taken at the time of the examination or the settling of such interrogatories. Section six hundred and fifty-three, except the first sentence thereof, and sections six hundred and fifty-four and six hundred and fifty-five shall apply to depositions taken out of the district on oral interrogatories.

Laws Oreg., Oct. 28, 1874; Hill's Ann. Laws, s. 827.

Sec. 657. **Proof before using certain depositions; insufficient notice.** If a deposition be taken under subdivision two, three, or four of section six hundred and sixty (644), before the same can be used proof shall be made that the witness did reside beyond the service of a subpœna, or that he still continues absent or infirm, as the case may be. A deposition taken, whether in the district or without, upon insufficient notice or otherwise not substantially in conformity with the provisions of this chapter may be excluded from the case unless such insufficient notice or other omission has been waived by the consent or conduct of the adverse party.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 828.

Sec. 658. **Deposition may be read at any time; exclusion of a portion.** When a deposition has once been taken, it may be read in the same action or proceeding, or in any other action or proceeding, between the same parties or their representatives upon the same subject, and is then to be deemed the evidence of the party reading it. When any portion of a deposition is excluded from a case, so much of the adverse examination as relates thereto is excluded also.

Laws Oreg., Oct. 28, 1874; Hill's Ann. Laws, s. 829; Murray v. Murray, 6 Oreg., 26; McQuaid v. Portland & Vancouver R. R. Co., 19 Oreg., 537.

CHAPTER SIXTY-FOUR.

OF THE GENERAL RULES OF EXAMINATION.

Sec.
659. Order of proof, how regulated.
660. Witness not under examination may be excluded.
661. Interpreter sworn, when.
662. Court may control mode of interrogation.
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667. Party not to impeach his own witness.
668. Witness, how re-examined.
669. How witness impeached.
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671. Evidence of good character, when allowed.
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Sec. 659. **Order of proof, how regulated.** The order of proof shall be regulated by the sound discretion of the court. Ordinarily, the party beginning the case shall exhaust his evidence before the other begins.

Laws Oreg., Oct. 11, 1862; Hill's Ann Laws, s. 830; Bennett v. Stephens, 8 Oreg., 444 (see 5 id., 159).

Sec. 660. **Witness not under examination may be excluded.** If either party require, it, the judge may exclude from the court room any witness

of the adverse party not at the time under examination, so that he may not hear the testimony of other witnesses.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 831; Schneider v. Hass, 14 Oreg., 174.

Sec. 661. **Interpreter, when sworn.** When a witness does not understand and speak the English language, an interpreter shall be sworn to interpret for him.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 832.

Sec. 662. **Court may control mode of interrogatories.** The court may exercise a reasonable control over the mode of interrogation, so as to make it as rapid, as distinct, as little annoying to the witness, and as effective for the extraction of the truth as may be; but, subject to this rule, the parties may put such legal and pertinent questions as they see fit. The court, however, may stop the production of further evidence, upon any particular point, when the evidence upon it is already so full as to preclude reasonable doubt.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 833.

Sec. 663. **Direct and cross-examination defined.** The examination of a witness by the party producing him is denominated the direct examination; the examination of the same witness upon the same matter, by the adverse party, the cross-examination. The direct examination must be completed before the cross-examination begins, unless the court otherwise direct.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 834.

Sec. 664. **Leading questions defined.** A question which suggests to the witness the answer which the examining party desires is denominated a leading or suggestive question. On a direct examination, leading questions are not allowed, unless merely formal or preliminary, except in the sound discretion of the court, under special circumstances, making it appear that the interests of justice require it.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 835; 10 Oreg., 409; 16 Id., 24.

Sec. 665. **When witness may refresh his memory from writing.** A witness is allowed to refresh his memory, respecting a fact, by anything written by himself or under his direction at the time when the fact occurred or immediately thereafter, or at any other time when the fact was fresh in his memory and he knew that the same was correctly stated in the writing. But in either case the writing must be produced, and may be inspected by the adverse party, who may, if he choose, cross-examine the witness upon it, and may read it to the jury. So, also, a witness may testify from such a writing, though he retain no recollection of the particular facts; but such evidence shall be received with caution.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 836.

Sec. 666. **Cross-examination, to what it extends.** The adverse party may cross-examine the witness as to any matter stated in his direct examination or connected therewith, and in so doing may put leading questions; but if he examine him as to other matters, such examination is to be subject to the same rules as a direct examination.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 837; 10 Oreg., 178; Sayres v. Allen, 25 Id., 211.

Sec. 667. **Party producing witness not allowed to impeach.** The party producing a witness is not allowed to impeach his credit by evidence of bad character, but he may contradict him by other evidence, and may also

show that he has made at other times statements inconsistent with his present testimony, as provided in section six hundred and seventy.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 838; 16 Oreg., 498, 18 id., 326; State v. Stevens, 29 id., 86.

Sec. 668. **Re-examination of witness.** A witness once examined shall not be re-examined as to the same matter without leave of the court; but he may be re-examined as to any new matter upon which he has been examined by the adverse party. After the examinations on both sides are concluded the witness shall not be recalled without leave of the court. Leave is granted or withheld in the exercise of a sound discretion.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 839.

Sec. 669. **Witness, how impeached.** A witness may be impeached by the party against whom he was called, by contradictory evidence, or by evidence that his general reputation for truth is bad, or that his moral character is such as to render him unworthy of belief, but not by evidence of particular wrongful acts; except that it may be shown by the examination of the witness or the record of the judgment that he has been convicted of a crime.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 840; 6 Oreg., 213; 13 id., 145; 16 id., 499.

Sec. 670. **Witness, how impeached.** A witness may also be impeached by evidence that he has made at other times statements inconsistent with his present testimony; but before this can be done the statements must be related to him, with the circumstances of times, places, and persons present; and he shall be asked whether he has made such statements, and, if so, allowed to explain them. If the statements be in writing, they shall be shown to the witness before any question is put to him concerning them.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 841; 5 Oreg., 168; State v. McDonald, 8 id., 113; 10 id., 407; 16 id., 499; State v. Stevens, 29 id., 86.

Sec. 671. **Evidence of good character.** Evidence of the good character of a party is not admissible in a civil action or proceeding unless the issue therein involve his character, nor of a witness in any action or proceeding until the character of such witness has been impeached.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 842.

Sec. 672. **Writing may be inspected by adverse party.** Whenever a writing is shown to a witness it may be inspected by the adverse party, and if proved by the witness, shall be read to the jury before his testimony is closed, or it shall not be read, except on recalling the witness.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 843.

CHAPTER SIXTY-FIVE.

OF THE EFFECT OF EVIDENCE.

Sec.
673. On what points jury to be instructed.

Sec. 673. **On what points jury to be instructed.** The jury, subject to the control of the court, in the cases specified in this code, are the judges of the effect and value of evidence addressed to them, except when it is thereby declared to be conclusive. They are, however, to be instructed by the court on all proper occasions:

First. That their power of judging the effect of evidence is not arbitrary,

but to be exercised with legal discretion and in subordination to the rules of evidence;

Second. That they are not bound to find in conformity with the declarations of any number of witnesses, which do not produce conviction in their minds, against a less number or against a presumption or other evidence satisfying their minds;

Third. That a witness willfully false in one part of his testimony may be distrusted in others;

Fourth. That the testimony of an accomplice ought to be viewed with distrust, and of the oral admissions of a party with caution;

Fifth. That in civil cases the affirmative of the issue shall be proved, and when the evidence is contradictory the finding shall be according to the preponderance of evidence; that in criminal cases guilt shall be established beyond reasonable doubt;

Sixth. That evidence is to be estimated not only by its own intrinsic weight, but also according to the evidence which it is in the power of one side to produce and of the other to contradict; and, therefore,

Seventh. That if the weaker and less satisfactory evidence is offered when it appears that stronger and more satisfactory was within the power of the party, the evidence offered should be viewed with distrust.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 845; 13 Oreg., 110; 15 id., 245; 16 id., 242; id., 537; 5 id., 188; 15 id., 642; 28 id., 380.

CHAPTER SIXTY-SIX.

OF THE RIGHTS AND DUTIES OF WITNESSES.

Sec.
674. Witness bound to attend when subpoenaed.
675. What questions witness bound to answer.
676. Right of witness to protection.
677. When witness protected from arrest.
678. To make affidavit if arrested.
679. Court may discharge witness from arrest.

Sec. 674. **Witness bound to attend when subpoenaed.** It is the duty of a witness, duly served with a subpœna, and tendered mileage and fees for the day named, to attend at the time appointed, with any papers, books, documents, or other thing under his control required by the subpœna, to answer all pertinent and legal questions, and unless sooner discharged, to remain until the testimony is closed; but a witness, at the end of each day's attendance, may demand of the party or his attorney the payment of his legal fees for the next following day, and if not then paid he is not obliged to remain longer in attendance.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 846.

Sec. 675. **What questions witness bound to answer.** A witness shall answer questions legal and pertinent to the matter in issue, though his answer may establish a claim against himself. But he need not give an answer which will have a direct tendency to subject him to criminal prosecution, or to degrade his character, unless, in the latter case, it be as to the very fact in issue, or to a fact from which the fact in issue would be presumed. This privilege is the privilege of the witness; but a witness must answer as to the fact of his previous conviction for felony.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 847; 10 Oreg., 408; 13 id., 156.

Sec. 676. **Right of witness to protection.** It is the right of the witness to be protected from irrevelant, insulting, or improper questions, or from harsh

or insulting demeanor; to be detained only so long as the interests of justice require it; to be examined only as to matters legal and pertinent to the issue.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 848.

Sec. 677. **When protected from arrest.** Every person who has been, in good faith, served with a subpœna to attend as a witness before a court, judge, commissioner, referee, or other officer, is exonerated from arrest in a civil case while going to the place of attendance, necessarily remaining there, and returning therefrom. The arrest of a witness contrary to this section is void, and when willfully made is a contempt of court; and the officer making it is responsible to the witness arrested for double the amount of damages which may be assessed against him therefor, and is also liable to an action at the suit of the party serving the witness with the subpœna for the damages sustained him in consequence of the arrest.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 849.

Sec. 678. **Affidavit to procure discharge if arrested.** But the officer making the arrest is not liable in any way therefor, unless the person making the exception make, if required, an affidavit stating—

First. That he has been served with a subpœna to attend as a witness before a court, judge, or other officer, specifying the same, the place of attendance, and the action or proceeding in which the subpœna was issued; and

Second. That he has not been thus served by his own procurement, with the intention of avoiding an arrest. The affidavit may be taken by the officer, and exonerates him from liability for not making the arrest or for discharging the witness when arrested.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 850.

Sec. 679. **Court may discharge witness from arrest.** The court, judge, or officer before whom the attendance of the witness is required may discharge a witness from an arrest made in violation of section six hundred and seventy-seven.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 851.

CHAPTER SIXTY-SEVEN.

OF EVIDENCE IN PARTICULAR CASES.

Sec.
680. Whoever pays or delivers entitled to receipt.
681. Objections to tender must be specified.
682. Rules for construing description of real property.
683. Offer of compromise not an admission.
684. Confession of adultery in divorce cases.

Sec. 680. **Whoever pays or delivers entitled to receipt.** Whoever pays money, or delivers an instrument or property, is entitled to a receipt therefor from the person to whom the payment or delivery is made, and may demand a proper signature to such receipt as a condition of the payment or delivery.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 853.

Sec. 681. **Objections to tender must be specified.** The person to whom a tender is made shall at the time specify any objection he may have to the money, instrument, or property, or he must be deemed to have waived it; and if the objection be to the amount of money, the terms of the instrument, or

the amount or kind of property, he must specify the amount, terms, or kind which he requires, or be precluded from objecting afterwards.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 854.

Sec. 682. **Rules for construing description of real property.** The following are the rules for construing the descriptive part of a conveyance of real property when the construction is doubtful and there are no other sufficient circumstances to determine it:

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 855.

First. Where there are certain definite and ascertained particulars in the description, the addition of others which are indefinite, unknown, or false does not frustrate the conveyance, but it is to be construed by such particulars, if they constitute a sufficient description to ascertain its application;

4 Oreg., 177; 18 id., 306; 25 id., 357; 27 id., 104.

Second. When permanent and visible or ascertained boundaries or monuments are inconsistent with the measurement, either of lines, angles, or surfaces, the boundaries or monuments are paramount;

Third. Between different measurements which are inconsistent with each other, that of angles is paramount to that of surfaces, and that of lines paramount to both;

Fourth. When a road or stream of water not navigable is the boundary, the rights of the grantor to the middle of the road or the thread of the stream are included in the conveyance, except where the road or bed of the stream is held under another title;

Fifth. When tide water is the boundary, the rights of the grantor to low-water mark are included in the conveyance;

Sixth. When the description refers to a map, and that reference is inconsistent with other particulars, it controls them, if it appear that the parties acted with reference to the map; otherwise the map is subordinate to other definite and ascertained particulars.

Sec. 683. **Offer to compromise not an admission.** An offer of compromise is not an admission that anything is due, and no evidence thereof shall be permitted.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 856.

Sec. 684. **Confession of adultery.** In an action for the dissolution of the marriage contract on the ground of adultery, a confession of adultery, whether in or out of the pleadings, is not of itself sufficient to justify a decree of dissolution.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 857.

CHAPTER SIXTY-EIGHT.

OF PROCEEDINGS TO PERPETUATE TESTIMONY.

Sec.
685. Evidence may be perpetuated.
686. Order for examination, how obtained.
687. Service of the order and notice in case of nonresidents.
688. How taken and where filed.
689. Papers filed with deposition, primary evidence.
690. When the deposition may be used.
691. How objected to when produced.
692. Power and duty of the officer taking deposition.

Sec. 685. **Evidence may be perpetuated.** The testimony of a witness may be taken conditionally and perpetuated as provided in this chapter.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 858.

Sec. 686. **Order for examination.** The order for taking the testimony may be made by any judge of the district court upon the application of the party desiring it, when it appears from the petition of such party, verified as a complaint—

First. That the applicant is a party or expects to be a party to an action or proceeding in a court in the district, or that he has an interest in real property or some easement or franchise therein about which a controversy may arise which would be the subject of such an action or proceeding;

Second. That the testimony of a witness, whose name and place of residence is stated, is material to the prosecution or defense, as the case may be, of such action or proceeding, or possible controversy, and generally the question involved therein, and the facts expected to be proved by the witness;

Third. The names and residence of the adverse parties or persons adversely interested, so far as the applicant knows or can ascertain them.

The judge may thereupon in his discretion make an order allowing the examination, prescribing therein the place thereof, and how long before the examination the order and notice of the time and place therefor shall be served.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 859.

Sec. 687. **Service of the order and notice.** If it appear that the adverse parties or persons adversely interested, or any of them, reside out of the district, or are unknown, the judge shall direct that, as to such parties or persons, service of the order and notice shall be made by publication, in the same manner as a summons. Upon proof of the service, the deposition may be taken conditionally by the judge who made the order of examination, or by any other officer or person therein designated.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 860.

Sec. 688. **How taken and where filed.** Every interrogatory or answer, or declaration of the witness, shall be taken down, unless the parties otherwise agree. The deposition, when completed, shall be carefully read to and subscribed by the witness, and then certified by the judge or other officer or person taking the same, and immediately thereafter filed in the office of the clerk of the court, together with the order for the examination of the witness, the petition on which the same was granted, the notice, and the proof of service of the order and notice.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 861.

Sec. 689. **Papers filed with deposition.** The papers filed with the deposition, as required by the last section, or a certified copy thereof, are primary evidence of the facts stated therein to show compliance with the provisions of this chapter.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 862.

Sec. 690. **When deposition may be used.** If thereafter a trial be had between the persons named in the petition as parties actual, expectant, or possible, or their representatives or successors in interest, upon proof of the death or insanity of the witness, or that he is beyond the district and his residence unknown, or of his inability to attend the trial by reason of age, sickness, or settled infirmity, the deposition or a certified copy thereof may be given in evidence by either party.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 863.

Sec. 691. **How objected to when produced.** The deposition when so taken, when produced in evidence, may be objected to as if it was the oral testimony

of the witness, except that the form of the interrogatory shall not be objected to.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 864.

Sec. 692. **Power and duty of the officer.** The judge, officer, or other person taking the deposition shall control the examination, to the end that the whole truth may be declared by the witness, and if no one appears other than the applicant, he shall prevent leading and suggestive interrogatories by such applicant, except when the same may be necessary or merely formal, and shall himself cross-examine the witness, concluding with the general interrogatory to the effect whether the witness knows anything further in relation to the matter which would be of benefit to either party.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 865.

CHAPTER SIXTY-NINE.

OF OATHS AND AFFIRMATIONS.

Sec.
693. Who authorized to take testimony and administer oaths.
694. Form may be varied to suit witness's belief.
695. Same subject.
696. Who may affirm.
697. Affirmation equivalent to oath; when false to be deemed perjury.

Sec. 693. **Who authorized to take testimony.** Every court, judge, clerk of a court, commissioner, justice of the peace, or notary public is authorized to take testimony in any action or proceeding, and such other persons in particular cases as this code elsewhere authorizes. Every such court or officer is authorized to administer oaths and affirmations generally, and every such other person in the particular case authorized.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 866; 1 Oreg., 328; id., 272.

Sec. 694. **Form of administering may be varied.** Whenever the court or officer before which a person is offered as a witness is satisfied that he has a peculiar mode of swearing, connected with or in addition to the usual form of administration, which, in his opinion, is more solemn or obligatory, the court or officer may in its discretion adopt that mode.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 868; 17 Oreg., 530.

Sec. 695. **Same subject.** When a person is sworn who believes in any other than the Christian religion, he may be sworn according to the peculiar ceremonies of his religion, if there be any such.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 869.

Sec. 696. **Who may affirm.** Any person who has conscientious scruples against taking an oath may make his solemn affirmation.

Sec. 697. **Affirmation equivalent to oath.** Whenever by any provision of this title an oath is required, an affirmation is to be deemed equivalent thereto, and a false affirmation is to be deemed perjury equally with a false oath.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 871.

CHAPTER SEVENTY.

OF COURTS OF JUSTICE.

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698. Judicial power, how vested.
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709. Judicial officer not to act as attorney, except.
710. Power of a judge out of court.
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712. Powers, how exercised.
713. Power to take and certify affidavits.
714. Same subject.

Sec. 698. **Judicial power, how vested.** The judicial power in the district of Alaska is vested in a district court, in commissioners exercising the powers of probate courts, and in commissioners as ex officio justices of the peace.

Sec. 699. **The district court.** The district court is a court of general jurisdiction, civil and criminal, and also shall have admiralty jurisdiction.

Sec. 700. **Justice's court.** A justice's court is a court held by a commissioner as ex-officio justice of the peace within the precinct for which he may be appointed. There are no particular terms of such court, but the same is always open for the transaction of business, according to the mode of proceeding prescribed for it.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 906; 6 Oreg., 246.

Sec. 701. **Mode of proceeding.** The mode of proceeding and the rules of evidence are the same in a justice's court as in a like action or proceeding in a court of record, except where otherwise specially provided.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 907; 6 Oreg., 245; 12 id., 321.

Sec. 702. **Jurisdiction of justice's court.** A justice's court has jurisdiction, but not exclusive, of the following actions:

First. For the recovery of money or damages only, when the amount claimed does not exceed one thousand dollars;

Second. For the recovery of specific personal property, when the value of the property claimed and the damages for the detention do not exceed one thousand dollars;

Third. For the recovery of any penalty or forfeiture, whether given by statute or arising out of contract, not exceeding one thousand dollars;

Fourth. Also, to give judgment without action upon the confession of the defendant for any of the cases specified in this section, except for a penalty or forfeiture imposed by statute.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 908; 12 Oreg., 321; 2 Oreg., 56; 6 Oreg., 303.

Sec. 703. **Jurisdiction not to include certain cases.** The jurisdiction conferred by the last section does not extend however—

First. To an action in which the title to real property shall come in question;

Second. To an action for false imprisonment, libel, slander, malicious prosecution, criminal conversation, seduction, upon a promise to marry, in actions of an equitable nature or in admiralty causes.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 909; 11 Oreg., 516; 12 id., 203; id., 347.

Sec. 704. **Where action may be commenced.** In an action in a justice's court to recover a penalty or forfeiture given by statute the cause of action or some part thereof must have arisen within the precinct where the action is commenced, or upon a lake, river, or other water bordering upon such precinct and opposite thereto; but otherwise than this the jurisdiction of justice's court does not depend upon where the cause arose, provided that the defendant shall reside in the precinct where the action is commenced, or personal service can be had on the defendant in such precinct; and if the defendant do not reside in the district, the action may be commenced in the precinct in which the plaintiff resides.

Laws Oreg., Dec. 20, 1865; Hill's Ann. Laws, s. 910; 11 Oreg., 274.

Sec. 705. **Power of court respecting judicial proceedings.** Every court of justice has power—

First. To preserve and enforce order in its immediate presence;

Second. To enforce order in the proceedings before it, or before a person or body empowered to conduct a judicial investigation under its authority;

Third. To provide for the orderly conduct of proceedings before it or its officers;

Fourth. To compel obedience to its judgments, orders, and process, and to the orders of a judge out of court, in an action or proceeding pending therein;

Fifth. To control, in furtherance of justice, the conduct of its ministerial officers, and of all other persons in any manner connected with a judicial proceeding before it in every matter appertaining thereto;

Sixth. To compel the attendance of persons to testify in an action or proceeding therein in the cases and manner provided by this code;

Seventh. To administer oaths in an action or proceeding pending therein, and in all other cases where it may be necessary in the exercise of its powers or the performance of its duties.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 911; 13 Oreg., 75; 9 Oreg., 121; U. S. v. Breitling, 20 How. 252.

Sec. 706. **Power, how exercised.** For the effectual exercise of the powers specified in the last section, the court may punish for contempt in the cases and the manner provided in this code.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 912.

Sec. 707. **Judicial officer, definition of. When disqualified to act.** A judicial officer is a person authorized to act as a judge in a court of justice. Such officer shall not act as such in a court of which he is a member in any of the following cases:

First. In an action or proceeding to which he is a party, or in which he is directly interested;

Second. When he was not present and sitting as a member of the court at the hearing of a matter submitted for its decision;

Third. When he is related to either party by consanguinity or affinity within the third degree;

Fourth. When he has been attorney in the action or proceeding in question for either party.

But this section does not apply to an application to change the place of trial, or the regulation of the order of business in court. In the cases specified in subdivisions three and four, the disqualification may be waived by the parties, and shall be deemed to be waived, unless an application be made as provided in this code.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 913.

Sec. 708. **When judge disqualified.** Whenever it appears that the judge of the district court presiding in the division where the action is pending is disqualified under the provisions of the section last preceding the action shall be transferred to another division of said court unless a judge of another division will appear and preside during the disposition thereof; Provided, however, That the parties may by written stipulation agree upon a member of the bar of said court to try the same.

Sec. 709. **Judicial officer not to act as attorney except.** Any judicial officer may act as an attorney in any action or proceeding to which he is a party or in which he is directly interested. A justice of the peace, otherwise authorized by law, may act as an attorney in any court other than the one of which he is judge, except in an action or proceeding removed therefrom to another court for review; but no judicial officer shall act as attorney in any court, or otherwise other than as in this section allowed: Provided, No justice of the peace or other judicial officer shall have a partner who shall practice law or act as attorney in the court over which he presides.

Laws Oreg., Feb. 20, 1891; Hill's Ann. Laws, s. 914.

Sec. 710. **Powers of a judge out of court.** A judge may exercise, out of court, all the powers expressly conferred upon a judge as contradistinguished from a court, and not otherwise.

Laws Oreg., Feb. 20, 1891; Hill's Ann. Laws, s. 915; 8 Oreg., 495.

Sec. 711. **Power of judicial officers.** Every judicial officer has power—

First. To preserve and enforce order in his immediate presence, and in the proceedings before him, when he is engaged in the performance of a duty imposed upon him by this code or other statute;

Second. To compel obedience to his lawful orders, as provided in this code;

Third. To compel the attendance of persons to testify in a proceeding pending before him in the cases and manner provided in this code;

Fourth. To administer oaths to persons, in a proceeding pending before him, and in all other cases where it may be necessary, in the exercise of his powers and the performance of his duties.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 916; 20 Oreg., 56.

Sec. 712. **Powers, how exercised.** For the effectual exercise of the powers specified in the last section, a judicial officer may punish for contempt in the cases and manner provided in this code.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 917.

Sec. 713. **Power to take and certify affidavits.** The judge of the district court has power in any part of the district to take and certify—

First. The proof and acknowledgment of a conveyance of real property, or any other written instrument authorized or required to be proved or acknowledged;

Second. The acknowledgment of satisfaction of a judgment in any court;

Third. An affidavit or deposition to be used in any court of justice or other tribunal of the district;

Fourth. To exercise any other power and perform any other duty conferred or imposed upon him by this code or other statutes.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 918.

Sec. 714. **Same subject.** Every other judicial officer may, within the precinct in which he is chosen—

First. Exercise the powers mentioned in subdivisions one, two and three of the last section;

Second. Exercise any other power and perform any other duty conferred or imposed upon him by this code or other statutes.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 919.

CHAPTER SEVENTY-ONE.

MISCELLANEOUS PROVISIONS RESPECTING THE COURTS AND JUDICIAL OFFICERS.

Sec.
715. Sittings of court to be public; exceptions.
716. Nonjudicial days; what legal business may be done.
717. If court appoint or adjourn for such day to be deemed for next judicial day.
718. When judge does not attend.
719. Proceedings not affected by failure of term or vacancy.
720. Application to court or judge, how addressed.
721. Proceedings to be in English.
722. Power of court to adjourn proceedings.
723. Means to be used by court to execute its powers.

Sec. 715. **Sittings of court to be public; exceptions.** The sittings of every court of justice are public, except as provided in this section. Upon the agreement of the parties to a civil action, or proceeding, filed with the clerk or entered upon the journal, the court may direct the trial of an issue of law or fact, or any other proceeding therein, to be private; and upon such order being made all persons shall be excluded except the officers of the court, the parties, their witnesses, and counsel.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 924.

Sec. 716. **Nonjudicial days; what legal business may be done.** Courts of justice may be held, and judicial business transacted, on any day except as provided in this section. No court can be opened, nor can any judicial business be transacted, on a Sunday, on a legal holiday, or on a day appointed by the Executive authority of the United States or of the district as a day of fasting or thanksgiving, except for the following purposes:

First. To give instructions to a jury then deliberating on their verdict;

Second. To receive the verdict of a jury;

Third. For the exercise of the powers of a magistrate in criminal actions, or in proceedings of a criminal nature: Provided, That this section shall not be so construed as to prevent the issuance of any writ or order for which the judge granting the same may think an emergency exists.

Laws Oreg., Feb. 21, 1867; Hill's Ann. Laws, s. 928; 17 Oreg., 570.

Sec. 717. **If court appoint or adjourn for such day, to be deemed for next judicial day.** If any of the days mentioned in the last section happen to be a day appointed for holding a court, or to which it is adjourned it is deemed appointed for or adjourned to the next judicial day.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 929.

Sec. 718. **When judge does not attend.** If no judge attend on the day appointed for holding a court, before four o'clock in the afternoon, the court shall stand adjourned until the next day at nine o'clock; and if no

judge attend on that day, before four o'clock in the afternoon, it shall then stand adjourned for the term.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 935.

Sec. 719. **Proceeding not affected by failure of term or vacancy.** No proceeding in a court of justice, in any action, suit, or proceeding pending therein, is affected by a vacancy in the office of the judge, or by the failure of a term thereof.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 936.

Sec. 720. **Application to court or judge, how addressed.** An application or other proceeding addressed to a court shall be addressed to it by its style, as given in this code; an application or other proceeding addressed to a judicial officer shall be addressed to him by his name, without any other title than his style of office.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 937.

Sec. 721. **Proceedings to be in English.** Every writing in any action, or proceeding whatever, in a court of justice of the district, or before a judicial officer, shall be in the English language; but such abbreviations as are now commonly used in that language may be used, and numbers may be expressed by figures or numerals in the customary manner.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 938.

Sec. 722. **Power of court to adjourn proceedings.** A court or judicial officer has power to adjourn any proceeding before it or him, from time to time, as may be necessary, unless otherwise expressly provided by this code.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 939; 9 Oreg., 198.

Sec. 723. **Means to be used by court to execute its powers.** When jurisdiction is by any law of the United States conferred on a court or judicial officer, all the means to carry it into effect are also given; and in the exercise of the jurisdiction, if the course of proceeding be not specially pointed out by this code, any suitable process or mode of proceeding may be adopted which may appear most conformable to the spirit of this code.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 940; 5 Oreg., 140; 8 id., 272; 10 id., 316; 12 id., 207; 13 id., 615; 16 id., 491.

CHAPTER SEVENTY-TWO.

OF REFEREES.

Sec.
724. Referee, definition of.

Sec. 724. **Definition of referee.** A referee is a person appointed by the court or a judicial officer, with power—

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 969.

First. To try an issue of law or of fact in a civil action, or proceeding, and report thereon;

Second. To ascertain any other fact in a civil action, or proceeding when necessary for the information of the court, and report the fact, or to take and report the evidence in an action of an equitable nature.

12 Oreg., 3; 1 id., 388; 10 id., 66; 8 id., 474; 11 id., 337.

Third. To execute an order, judgment, or decree, or to exercise any other power or perform any other duty expressly authorized by this code.

CHAPTER SEVENTY-THREE.

OF COMMISSIONERS TO ACKNOWLEDGE DEEDS.

Sec.
725. How appointed, tenure of office, powers and duties.
726. Seal and oath of office, and when and where filed.

Sec. 725. **How appointed, powers and duties.** The governor may appoint as many commissioners in each State, Territory and district of the United States as he may deem expedient, who shall hold their offices for four years, and may, within the State, Territory, or district for which they are appointed, and not otherwise, take and certify—

First. The proof or acknowledgment of a conveyance of real property within the district or of any other written instrument to be used or operate therein;

Second. The acknowledgment of satisfaction of any judgment or decree of a court in this district;

Third. An affidavit or deposition to be used in any court of justice or before any judicial officer of the district; and

Fourth. To exercise any other power, and perform any other duty, conferred or imposed upon them by this code or other statutes.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 971.

Sec. 726. **Seal and oath of office.** A commissioner appointed under the last section shall, before he can exercise the powers therein conferred, provide himself with a seal of office, and take and subscribe an oath before a judicial officer in the county, city, or town where he resides, faithfully to perform the duties of the office of a commissioner to take affidavits, depositions, and the proof and acknowledgment of deeds, out of the district, according to the laws thereof, and file such oath and an impression of such seal in the office of the secretary of the district. The secretary of the district shall collect five dollars for each certificate of appointment made under this chapter and disburse the same as provided in section thirty-two, title one, chapter one, of this Act.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 972.

CHAPTER SEVENTY-FOUR.

OF THE CLERK OF THE DISTRICT COURT.

Sec.
727. Office hours.
728. Deputy, how appointed.
729. Can not act as attorney.
730. Powers and duties of clerks.

Sec. 727. **Office hours.** The clerk of the district court shall keep his office open for the transaction of business on every judicial day, from nine to twelve in the forenoon, and from one to five in the afternoon.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 987.

Sec. 728. **Deputy, how appointed.** The clerk of the district court or any division thereof may have a deputy, to be appointed by such clerk in writing, at each place where regular or special terms of court are held, and to continue during his pleasure. Such deputy has the power to perform any act or duty relating to the clerk's office that his principal has, and his principal is responsible for his conduct; and for all money received by him in his official capacity each deputy clerk shall be entitled to such compensation as the court or judge thereof may, subject to the approval of the Attorney General, allow, the same to be paid by the clerk on order of the court as other court expenses are allowed and paid.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 988; 1 Oreg., 250.

Sec. 729. **Can not act as attorney.** The clerk of the district court is prohibited during his continuance in office from acting, or having a partner who acts as an attorney of the court of which he is clerk.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 989.

Sec. 730. **Powers and duties of clerks.** The clerk of the district court has power to take and certify the proof and acknowledgment of a conveyance of real property or any other written instrument authorized or required to be proved or acknowledged, and it is the duty of such clerk—

First. To keep the seal of the court and affix it in all cases where he is required by law;

Second. To record the proceedings of the court;

Third. To keep the records, files, and other books and papers appertaining to the court;

Fourth. To file all papers delivered to him for that purpose in any action, or proceeding in the court;

Fifth. To attend the terms of the court of which he is clerk, to administer oaths, and receive the verdict of a jury in any action or proceeding therein in the presence and under the direction of the court;

Sixth. To keep the journal of the proceedings of the court at its terms, and under the direction of the court to enter its orders and judgments;

Seventh. To authenticate by certificate or transcript, as may be required, the records, files, or proceedings of the court, or any other paper appertaining thereto, and filed with him;

Eighth. To exercise the powers and perform the duties conferred and imposed upon him elsewhere by this code or other statute;

Ninth. In the performance of his duties to conform to the direction of the court.

Laws Oreg., Oct. 20, 1864; Hill's Ann. Laws, s. 990.

CHAPTER SEVENTY-FIVE.

OF ATTORNEYS AND THEIR ADMISSION.

Sec.
731. When cause may be prosecuted or defended in person or by attorney.
732. Attorney a public officer; who may act as such.
733. Application for admission and proof thereon.
734. Women may be admitted.
735. Oath of office; order of admission.
736. Attorneys of other States and countries may appear as counsel.

Sec. 731. **When cause may be prosecuted in person or by attorney.** Any action or proceeding may be prosecuted or defended by a party in person

or by attorney, except that the United States or a corporation, either public or private, appears by attorney in all cases; and where a party appears by attorney the written proceedings must be in the name of the attorney, who is the sole representative of his client as between him and the adverse party.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1032.

Sec. 732. **Attorney a public officer.** An attorney is a public officer, but any person may act in that capacity who has been admitted as such by the district court of the district, or may be hereafter admitted, as provided in this chapter.

Laws Oreg., Oct. 24, 1868; Hill's Ann. Laws, s. 1033.

Sec. 733. **Application and proof.** An applicant for admission as attorney must apply to the district court, and must show—

First. That he is a citizen of the United States, or has declared his intention to become such, and is a resident of said district, and of the age of twenty-one years, which proof may be made by his own affidavit;

Second. That he is a person of good moral character, which may be proved by any evidence satisfactory to the court;

Third. That he has the requisite learning and ability, which must be shown by the examination of the applicant by the judges, or under their direction at the term at which the application is made.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1034.

Sec. 734. **Women may be admitted.** Hereafter women shall be admitted to practice law as attorneys in the courts of said district upon the same terms and conditions as men.

Laws Oreg., Nov. 20, 1885; Hill's Ann. Laws, s. 1035.

Sec. 735. **Oath of office, order of admission.** If, upon examination, the applicant be found qualified, the court shall administer an oath to the applicant to support the Constitution and laws of the United States and of the district, and to faithfully and honestly demean himself or herself in office. The court shall then direct an order to be entered to the effect that the applicant is a citizen of the United States and of the district, of the age of twenty-one years, of good moral character, and possessed of the requisite learning and ability to practice as an attorney in all the courts of the district, and has taken the oath of office; and upon the entry of the order and payment of the legal fee, he or she is entitled to practice as such attorney, and not otherwise.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1036.

Sec. 736. **When admitted on certificate.** Whenever an applicant for admission as attorney shall present to the district court a certificate showing him to have been duly admitted to practice as an attorney in the highest courts of any State or Territory of the United States, or in one of the circuit courts, or the Supreme Court of the United States, such applicant may be admitted to practice as an attorney without further examination.

CHAPTER SEVENTY-SIX.

OF THE DUTIES OF ATTORNEYS, AND THEIR AUTHORITY.

Sec.
737. Authority of an attorney.
738. Proceedings when party alleges that attorney appears for him without authority.
739. When attorney may be compelled to show authority.
740. Attorney, how changed.
741. Notice of change.
742. Lien of attorneys.
743. By what court and for what causes an attorney may be removed or suspended.
744. By whom the proceedings to be instituted.
745. Accusation, how made.
746. Order for accused to appear and answer.
747. If accused do not appear, court to proceed.
748. May demur to or controvert the accusation.
749. If demurrer not sustained must answer forthwith; judgment for want of answer or trial.
750. Accusation on knowledge of the court presumed to be true, but may be shown otherwise.
751. Proceeding to compel an attorney to deliver over money or papers.
752. How court to proceed if attorney claim a lien.

Sec. 737. Authority of an attorney. An attorney has authority—

First. To bind his client in any of the proceedings in an action, or proceeding by his agreement filed with the clerk or entered upon the journal of the court, and not otherwise;

Second. To receive money or property claimed by his client in an action, or proceeding during the pendency thereof, or within three years after judgment, and, upon the payment or delivery thereof, and not otherwise, to discharge the claim or acknowledge satisfaction of the judgment. But this section does not prevent a party from employing a new attorney to issue execution upon a judgment, or to take the other proceedings prescribed by this code for its enforcement, and when he does so the authority of the former attorney ceases.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1039.

Sec. 738. Proceedings where authority is defined. If it be alleged by a party for whom an attorney appears that he does so without authority, and the allegation be verified by the affidavit of the party, the court may, if it find the allegation true, at any stage of the proceedings, relieve the party for whom the attorney has assumed to appear from the consequences of his acts.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1040.

Sec. 739. When attorney must prove his authority. The court or judge thereof may, on motion of either party, and on showing reasonable grounds therefor, require the attorney for the adverse party, or for any one of several adverse parties, to produce or prove the authority under which he appears, and until he does so may stay all proceedings by him on behalf of the party for whom he assumes to appear.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1041.

Sec. 740. Attorney, how changed. The attorney in an action or proceeding may be changed at any time before judgment, or final determination, as follows:

First. Upon his own consent, filed with the clerk or entered upon the journal; or,

Second. Upon the order of the court or judge thereof, on the application of the client or the attorney, for sufficient cause.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1042.

Sec. 741. **Notice of change.** When an attorney is changed as provided in the last section, written notice of the change and of the substitution of a new attorney, or of the appearance of the party in person, shall be given to the adverse party. Until then, he is bound to recognize the former attorney.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1043.

Sec. 742. **Lien of attorney.** An attorney has a lien for his compensation, whether specially agreed upon or implied, as provided in this section—

First. Upon the papers of his client which have come into his possession in the course of his professional employment;

Second. Upon money in his hands belonging to his client;

Third. Upon money in the hands of the adverse party in an action or proceeding in which the attorney was employed, from the time of giving notice of the lien to that party;

Fourth. Upon a judgment to the extent of the costs included therein, or if there be a special agreement, to the extent of the compensation specially agreed on, from the giving notice thereof to the party against whom the judgment is given, and filing the original with the clerk where such judgment is entered and docketed. This lien is, however, subordinate to the rights existing between the parties to the action or proceeding.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1044.

Sec. 743. **By what court and for what causes an attorney may be removed or suspended.** An attorney may be removed or suspended by the district court for either of the following causes, arising after his admission to practice:

First. Upon his being convicted of any felony or of a misdemeanor involving moral turpitude, in either of which cases the record of his conviction is conclusive evidence;

Second. For a willful disobedience or violation of the order of a court requiring him to do or forbear an act connected with or in the course of his profession;

Third. For being guilty of any willful deceit or misconduct in his profession.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1047.

Sec. 744. **By whom the proceeding to be instituted.** The proceeding to remove an attorney as provided in the last section shall be taken by the court, of its own motion, for matters within its knowledge, or that of any of the judges thereof; otherwise it may be taken upon the information of another.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1048.

Sec. 745. **Accusation against attorney, how made.** If the proceedings be upon the motion of the court or judges thereof, for matters within its knowledge, the accusation shall be made by an order of the court reciting the facts charged. If upon the information of another, the accusation must be presented to the court, in writing, and verified by the oath of the person making it, or of some other person, to the effect that the charges therein contained are true, as he believes.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1049.

Sec. 746. **Order for accused to appear and answer.** After the accusation has been made or received the court shall forthwith make an order requiring the accused to appear and answer the accusation at a specified time in the same or a subsequent term, and shall cause a copy of the order and of the accusation to be served upon the accused within a prescribed time before the day appointed in the order to appear and answer. But when the proceeding is upon the information of another, the accusation shall be dismissed at once unless it appear therefrom that the accused should be required to appear and answer the same.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1050.

Sec. 747. **If accused do not appear, court to proceed.** The accused must appear at the time appointed in the order and answer the accusation, unless, for sufficient cause, the court assign another day for that purpose. If he do not appear the court may proceed and determine the accusation in his absence.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1051.

Sec. 748. **Accusation may be demurred to or controverted.** The accused may demur to the accusation for insufficiency or controvert it by answer. The demurrer and answer shall be in writing, and the latter shall be verified by the oath of the accused in the same manner as a pleading in an action at law.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1052.

Sec. 749. **If demurrer not sustained must answer forthwith.** If a demurrer, for insufficiency, be not sustained, the accused shall answer forthwith. If he plead guilty, or refuse to answer the accusation, the court shall proceed to judgment of removal or suspension. If he controvert the matters charged, the court shall then, or at such time as it may appoint, proceed to try the accusation, and give a judgment of removal, suspension, or acquittal, according to law and the right of the case.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1053.

Sec. 750. **Accusation on the knowledge of the court.** When an accusation is made upon the knowledge of the court, or the judges thereof, the facts shall be set forth as in other cases, and the accused may controvert the accusation, whereupon the issues of fact shall be by the court referred to at least three disinterested members of the bar, who shall report their findings of fact to the court, and the judgment of the court shall be entered according to such findings.

Sec. 751. **Proceedings to compel attorney to deliver money or papers.** When an attorney refuses to deliver over money or papers to a person from or for whom he has received them in the course of professional employment, whether in a judicial proceeding or not, he may be required by an order of the court to do so within a specified time, or show cause why he should not be punished for a contempt.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1056.

Sec. 752. **How court to proceed if attorney claims a lien.** If, however, the attorney claim a lien upon the money or papers, under the provisions of section seven hundred and forty-two, the court shall—

First. Impose, as a condition of making the order, that the client give security, in form and amount to be directed, to satisfy the lien, when determined in an action; or,

Second. Summarily inquire into the facts on which the claim of a lien is founded, and determine the same; or,

Third. Direct the trial of the controversy by a jury or refer it, and upon the verdict or report, determine the same as in other cases.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1057.

CHAPTER SEVENTY-SEVEN.

OF RECEIVERS.

Sec.
753. In what cases he may be appointed.
754. His oath and undertaking.

Sec. 753. **In what cases appointed.** A receiver may be appointed in any civil action, or proceeding, other than an action for the recovery of specific personal property—

First. Provisionally, before judgment, on the application of either party, when his right to the property which is the subject of the action, or proceeding, and which is in the possession of an adverse party, is probable, and the property or its rents or profits are in danger of being lost or materially injured or impaired;

Second. After judgment, to carry the same into effect;

Third. To dispose of the property according to the judgment, or to preserve it during the pendency of an appeal, or when an execution has been returned unsatisfied, and the debtor refuses to apply his property in satisfaction of the judgment or decree;

Fourth. In cases provided in this code, or by other statutes, when a corporation has been dissolved or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights;

Fifth. In the cases when a debtor has been declared insolvent.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1061; 15 Oreg., 89; 14 id., 165.

Sec. 754. **Oath and undertaking of receiver.** A receiver, before entering upon his duties, shall be sworn faithfully to perform his trust, to the best of his ability, and shall also file with the clerk of the court an undertaking, of one or more sufficient sureties, in a specified sum, to be fixed by the court or judge thereof, to the effect that he will faithfully discharge the duties of receiver, and will obey the orders of the court or judge thereof in respect thereto. The sureties must justify in the same manner as bail upon an arrest.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1062.

CHAPTER SEVENTY-EIGHT.

OF THE TRIAL FEE.

Sec.
755. Trial fees.
756. Amount of.
757. Recovered as disbursement.
758. Public corporation need not pay.
759. In justice's court, when and to whom paid.
760. When party too poor to pay.
761. Trial fee to be paid to the clerk.
762. Trial fee in justice's court.

Sec. 755. **Trial fees.** Parties to a judicial proceeding are required to contribute towards the expense of maintaining courts of justice, or a particular

action, or proceeding therein, by the payment of certain sums of money, as provided in this chapter, which are denominated trial fees.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1063.

Sec. 756. **Amount of.** The trial fee is as follows:

First. In the district court, for every trial by jury, twelve dollars; for every trial by the court, six dollars; for every judgment given without trial, three dollars;

Second. In justice's court, for every trial by jury, six dollars.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1064.

Sec. 757. **Recovered as disbursement.** The trial fee is to be paid by the plaintiff, appellant, or moving party before he is entitled to or can claim the trial or other proceeding upon which such fee is imposed; and if the party paying such fee prevail in the action, or proceeding, so as to be entitled to recover costs therein, such fee shall be allowed and taxed as a disbursement and collected off the adverse party.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1065; 5 Oreg., 136.

Sec. 758. **Public corporation need not pay.** When the United States or any public corporation is a party to a judicial proceeding it need not pay the trial fee in advance, and if it be entitled to recover costs therein, such fee shall be allowed and taxed in its favor as a disbursement and collected off the adverse party as in ordinary cases.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1066.

Sec. 759. **In justice's court, when and to whom paid.** The trial fee in a justice's court shall be paid to the justice for the demand for a jury, and unless so paid the demand shall be disregarded and the trial proceed as if no such demand had been made, except when a party is prosecuted in a criminal action at the suit of the United States, in which case the party is entitled to a jury trial without the prepayment of such fee; and if judgment be given against him, the fee shall be allowed and taxed in favor of the United States as other disbursements in ordinary cases.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1067.

Sec. 760. **When party too poor to pay.** If at any time it appear to the satisfaction of the court or judge thereof, from the affidavit of the party or other evidence, that he can not pay the trial fee, such court or judge may direct that he be allowed to proceed without the prepayment thereof; but if such party prevail so as to be entitled to collect such fee as a disbursement off the adverse party, when collected it shall be retained by the clerk as if paid in advance.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1069.

Sec. 761. **Trial fee to be paid to the clerk.** The trial fees shall be paid to the clerk of the court, who shall keep a regular account of them and by whom paid in his fee book, and deposit them in the manner provided in the case of other monies collected by virtue of his office.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1070.

Sec. 762. **Trial fee in justice's court.** In justice's court the trial fee shall be paid to a justice. He shall keep an account of them and by whom paid, and distribute the amount among the jury in the particular case, in payment of their legal fees.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1072.

CHAPTER SEVENTY-NINE.

OF GENERAL PROVISIONS RESPECTING THE ADMINISTRATION OF ESTATES.

Sec.
763. Probate jurisdiction of commissioner.
764. Forms of pleadings.
765. Nature of procedure.
766. Books and records.
767. Index to such books.
768. Costs and disbursements.
769. Orders and decrees for the payment of money, how enforced.

Sec. 763. **Probate matters, jurisdiction of.** The commissioners appointed in pursuance of this Act and other laws of the United States have jurisdiction within their respective precincts, subject to the supervision of the district judge, in all testamentary and probate matters; that is,

First. To take proof of wills;

Second. To grant and revoke letters testamentary, of administration, and of guardianship;

Third. To direct and control the conduct and settle the accounts of executors, administrators, and guardians;

Fourth. To direct the payment of debts and legacies, and the distribution of the estates of intestates;

Fifth. To order the sale and disposal of the real and personal property of deceased persons;

Sixth. To order the renting, sale, or other disposal of the real and personal property of minors;

Seventh. To take the care and custody of the person and estate of a lunatic or habitual drunkard, and to appoint and remove guardians therefor; to direct and control the conduct of such guardians, and to settle their accounts;

Eighth. To direct the admeasurement of dower.

23 Stat. L., 24, s. 5, May 17, 1884; Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, 896; 3 Oreg., 380; 5 id., 585; 6 id., 180; id., 190; 11 id., 306; id., 60; 12 id., 108; 17 id., 599; 19 id., 183; 20 id., 77; 26 id., 320; 9 id., 128; 7 id., 42; 6 id., 119; 4 id., 305; 8 id., 193; 2 id., 336; 8 id., 470; 5 Saw., 229; 6 id., 262.

Sec. 764. **Forms of pleadings.** There are no particular pleadings or forms thereof in proceedings before commissioners when exercising the jurisdiction of probate matters, as specified in the section last preceding, other than as provided in this chapter.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1077; 23 Oreg., 111.

Sec. 765. **Nature of procedure; how court exercises its powers.** The mode of proceeding is in the nature of a suit in equity as distinguished from an action at law. The proceedings are in writing, and are had upon the application of a party or the order of the court. The court exercises its powers by means of—

First. A citation to the party;

Second. An affidavit or the verified petition or statement of a party;

Third. A subpœna to a witness;

Fourth. Orders, judgments and decrees;

Fifth. An execution or warrant to enforce them.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1078; 10 Oreg., 301; 19 id., 185; 26 id., 330.

Sec. 766. **Books and records relating to probate matters.** The proceedings in probate matters shall be entered and recorded in the following books:

First. A register in which shall be entered a memorandum of all official

business transacted by the court or judge thereof appertaining to the estate of each person deceased under the name of such person; that pertaining to the guardianship of an infant under the name of such infant; that pertaining to an insane person or a drunkard under his name;

Second. A record of wills, in which shall be recorded all wills proven before the court or judge thereof, with the order of probate thereof, and of all wills proved elsewhere upon which letters of administration are issued by the direction of such court or judge;

Third. A record of the appointment of administrators, whether general or special, or of a partnership and of executors;

Fourth. A record of the appointment of guardians of infants, insane persons, and drunkards;

Fifth. A record of accounting and distribution, in which shall be entered a summary balance sheet of the accounts of administrators, executors, and guardians, with the orders and decrees relating to the same; a memorandum of executions issued thereon, with a note of satisfaction when satisfied; also orders and decrees relating to the sale of real property and to the distribution of the proceeds thereof; and notices of all money or securities paid or deposited in court as proceeds of such sales or otherwise; and a statement showing the names of creditors, and the debts established and entitled to distribution, the amount to which each person is entitled out of such fund, and the amount actually paid to each person, and when paid;

Sixth. A record of the appointment of admeasurer of dower, with all orders and decrees relating to the same, and the admeasurer's report.

Seventh. An order book, in which shall be entered orders directing the conduct of executors, administrators, or guardians; orders for publication of notice to creditors; orders in behalf of creditors directing debts to be paid, or allowing an execution to be issued; appointments of special guardians, appraisers, and referees; orders relating to the production of a will, to removal of executors, administrators, or guardians, or to sureties therefor; and, generally, all other orders not required to be entered in some other book.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1079.

Sec. 767. **Index to such books.** To each of such books there shall be attached an index, securely bound in the volume, referring to the entries or records in alphabetical order, under the name of the person to whose estate or business they relate, and naming the page of the book where the entry or record is made.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1080.

Sec. 768. **Costs and disbursements.** Costs may be awarded in favor of one party against another, to be paid personally or out of the estate or fund, in any proceedings contested adversely, but such costs can not exceed those allowed in the trial of a civil action in the district court. Witness' fees and other disbursements similar to those allowed on the trial of a civil action may also be allowed, to be paid in like manner.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1081.

Sec. 769. **Orders or decrees for the payment of money.** Orders, judgments or decrees for the payment of money may be enforced by execution or otherwise, in the same manner as orders, judgments or decrees for the payment of money in the district court.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1082.

CHAPTER EIGHTY.

OF THE COMMISSIONERS' COSTS IN THE EXERCISE OF PROBATE JURISDICTION.

Sec.
770. Commissioners shall have seal and may appoint clerk.
771. Fees of commissioners.

Sec. 770. **Commissioners shall have seal and may appoint clerk.** In the exercise of the jurisdiction conferred upon commissioners by this code in the administration of the estates of deceased persons, and of minors, lunatics, and habitual drunkards, such commissioners shall sit as a probate court, which shall be always open for the transaction of business. Such court shall have a seal, upon which there shall be engraved the words "Probate court, district of Alaska, ——— precinct;" and such courts may appoint a clerk who shall have the authority to attest such seal when attached to the lawful orders and certificates of such court.

Sec. 771. **Fees of commissioners.** For the services rendered in the administration of the estates of decedents and of minors, lunatics, and habitual drunkards, the commissioners shall receive fees as follows:

First. For the granting of letters of administration or guardianship, two dollars;

Second. For every other order made in the course of administration, fifty cents; allowance or disallowance of claims, fifty cents;

Third. For the hearing of any objection, one dollar;

Fourth. For making and certifying transcripts to the district court, ten cents per folio.

CHAPTER EIGHTY-ONE.

OF THE PROOF OF WILLS AND THE APPOINTMENT OF EXECUTORS AND ADMINISTRATORS.

Sec.
772. In what precinct will may be proven.
773. Letters testamentary with the will annexed.
774. Who entitled to letters of administration.
775. When persons entitled must apply.
776. Administration to be granted to the husband, unless.
777. Undertaking of executor or administrator.
778. Qualification and justification of sureties.
779. Nonresidents and minors as executors.
780. Special administrator.
781. Petition to state facts.
782. When will found after administration granted.
783. Heir may apply for removal of executor or administrator.
784. Nonresident executor or administrator may be removed.
785. New undertaking when old insufficient.
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788. New administrator may maintain action against former one.
789. Power of the court over an administrator.
790. When deceased a member of a copartnership.
791. Partnership property may be administered by surviving partner.
792. His powers and duties in such cases.
793. Undertaking of administrator of the partnership.
794. When administration of partnership property devolves upon the general administrator.
795. Duty of surviving partner toward administrator.
796. How last section may be enforced.

Sec.
797. Who not qualified to act as executor or administrator.
798. Form of letters testamentary.
799. Form of letters of administration.
800. Resignation of executor or administrator.

Sec. 772. **In what precinct will may be proven.** Proof of a will shall be taken by the commissioner as follows:

First. When the testator, at or immediately before his death, was an inhabitant of the precinct, in whatever place he may have died;

Second. When the testator, not being an inhabitant of the district, shall have died in the precinct, leaving assets therein;

Third. When the testator, not being an inhabitant of the district, shall have died out of the district, leaving assets in the precinct;

Fourth. When the testator, not being an inhabitant of the district, shall have died out of the district, not leaving assets therein, but where assets thereafter came into the precinct;

Fifth. When real property, devised by the testator, is situated in the precinct and no other commissioner has gained jurisdiction under either of the preceding subdivisions of this section.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1083.

Sec. 773. **Letters of administration, with the will annexed.** When a will is proven, letters testamentary shall be issued to the persons therein named as executors, or to such of them as give notice of their acceptance of the trust and are qualified. If all the persons therein named decline to accept or be disqualified, letters of administration, with the will annexed, shall be issued to the person to whom the administration would have been granted if there had been no will.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1084; 2 Oreg., 302; 7 id., 42; 12 id., 108; 16 id., 148.

Sec. 774. **Who entitled to letters.** Administration of the estate of an intestate shall be granted by the commissioner authorized to take proof of a will as prescribed in section seven hundred and seventy-two in case such intestate had made a will. Administration shall be granted, and letters thereof issued, as follows:

First. To the widow or next of kin, or both, in the discretion of the court;

Second. To one or more of the principal creditors; or

Third. To any other person competent and qualified whom the court may select.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1085; 12 Oreg., 108.

Sec. 775. **When person entitled must apply.** The persons named in the subdivisions of the last section, if qualified and competent for the trust, shall be entitled to the administration in the order therein named. If those named in subdivision one do not apply for the administration within thirty days from the decease of the intestate, they shall be deemed to have renounced their right thereto; but the commissioner in his discretion may, if they reside within the precinct, direct that a citation issue to them, requiring them within such period to apply for or renounce their right of administration; and if the persons named in subdivision two do not make such application within forty days from such decease, they shall be deemed to have renounced their right to the administration also.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1086.

Sec. 776. **When administration granted to husband.** If the deceased were a married woman the administration of her estate shall in all cases be granted

to her husband, if he be qualified and competent for the trust and apply therefor within thirty days from her decease, unless by force of a marriage settlement or otherwise she shall have made some testamentary deposition of her property which shall render it necessary and proper to grant the administration to some other person.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1087.

Sec. 777. **Undertaking of executor or administrator.** No executor or administrator is authorized to act as such until he shall file with the commissioner having jurisdiction of the estate an undertaking in a sum not less than double the probable value of the estate, with one or more sufficient sureties, to be approved by the commissioner, to be void upon condition that such executor or administrator shall faithfully perform the duties of his trust according to law: Provided, When by the terms of his will a testator shall expressly declare that no bonds shall be required of his executor such executor may act upon taking an oath to faithfully fulfill (the) trust without filing the undertaking in this section mentioned: Provided further, Such executor shall be criminally and civilly liable as other executors and administrators are for any dereliction of duty.

Laws Oreg., Oct. 22, 1070; Hill's Ann. Laws, s. 1088; 4 Oreg., 492; 6 id., 55; 11 id., 304; 2 id., 91; 15 id., 145; 26 id., 320.

Sec. 778. **When three or more sureties may be given.** Whenever the penal sum mentioned in the undertaking prescribed in the preceding section exceeds two thousand dollars three or more sureties may become severally liable for portions of the sums if the aggregate sum for which such sureties became liable shall equal the penal sum required in the undertaking.

Laws Oreg., Oct. 22, 1870; Hill's Ann. Laws, s. 1089.

Sec. 779. **Nonresidents and minors as executors.** If a person be named in a will as executor who is a nonresident of the district or a minor, upon the removal of such disability he is entitled to qualify as such executor, if he apply therefor within thirty days from the removal of such disability, if otherwise competent. If in the meantime an administrator with the will annexed has been appointed, his powers and duties cease with the qualification of such executor; but if another executor has qualified and is acting as such they thereby become joint executors.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1090; 12 Oreg., 108.

Sec. 780. **Special administrators.** When for any reason there shall be a delay in issuing letters testamentary or of administration, and the property of the deceased is in danger of being lost, injured, or depreciated, the commissioner may appoint a special administrator to take charge of the estate, who shall qualify in like manner and have the powers and perform the duties of an administrator generally, except that he is not authorized to pay the debts of or otherwise discharge any obligations against the deceased. Upon the issuing of letters testamentary or of administration the powers of the special administrator cease.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1091.

Sec. 781. **Petition to state facts.** In an application to prove a will or for the appointment of an executor or administrator the petition shall set forth the facts necessary to give the court jurisdiction, and also state whether the deceased left a will or not, and the names, age, and residence, so far as known, of his heirs.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1092; 6 Oreg., 189; 7 id., 42; id., 390; 7 Saw., 280.

Sec. 782. **Proceedings when will found after administration granted.** If, after administration has been granted upon an estate, a will of the deceased be found and proven, the letters of administration shall be revoked and letters testamentary or of administration with the will annexed shall be issued; and if, after a will has been proven and letters testamentary or of administration with the will annexed have been issued thereon, such will should be set aside, declared void or inoperative, such letters shall be revoked and letters of administration issued.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1093.

Sec. 783. **Heir, etc., may apply for removal of executor or administrator.** Any heir, legatee, devisee, creditor, or other person interested in the estate may apply for the removal of an executor or administrator who has become of unsound mind or been convicted of any felony or a misdemeanor involving moral turpitude, or who has in any way been unfaithful to or neglectful of his trust, to the probable loss of the applicant. Such application shall be by petition and upon notice to the executor or administrator, and if the court find the charge to be true it shall make an order removing such executor or administrator and revoke his letters.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1094; 12 Oreg., 114; 18 id., 175.

Sec. 784. **If executor or administrator become nonresidents.** If an executor or an administrator become a nonresident of the district he may be removed and his letters revoked in the manner prescribed in the last section, except that the notice may be given by publication or posting for such time as the court or judge thereof may direct.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1095; 7 Oreg., 368; 18 id., 176.

Sec. 785. **New undertaking when old insufficient.** Whenever the amount of an executor's or administrator's undertaking is insufficient, or the sureties therein, or either of them, have become nonresidents of the district, or are likely to or have become insolvent, such executor or administrator shall be required to give a new and sufficient undertaking. The application for such new undertaking may be made by any heir, legatee, devisee, creditor, or other person interested in the estate, and in the manner prescribed in section seven hundred and eighty-three for the removal of excutors and administrators.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1096; 4 Oreg., 492; 6 id., 55; 11 id., 304.

Sec. 786. **Effect of new undertaking or failure to give it.** Such new undertaking, when given and received, shall discharge the sureties in the former undertaking from any liabilities on account of their principal arising from his acts or omissions subsequent thereto. When a new undertaking is ordered, if the executor or administrator fail to comply therewith within five days from the entry thereof, or such further time as the order may prescribe, thenceforward the authority of such executor or administrator shall cease, and he shall be deemed removed and his letters revoked.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1097.

Sec. 787. **Effect of death, resignation, or removal.** Whenever an executor or administrator shall die, resign, or be removed, if there be a coexecutor or coadministrator, he shall thenceforward exercise the powers and perform the duties of the trust; and if all the executors or administrators shall die, resign, or be removed, administration of the estate remaining unadministered shall be granted to those next entitled, if they be competent and qualified.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1098.

Sec. 788. **New administrator may maintain action against former one.** The surviving or remaining executor or administrator, or the new administrator, as the case may be, is entitled to the exclusive administration of the estate, and for that purpose may maintain any necessary and proper action, suit, or proceeding on account thereof, against the executor or administrator ceasing to act, or against his sureties or representatives.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1099; 11 Oreg., 304.

Sec. 789. **Power of commissioner over an administrator.** Whenever it appears probable to the commissioner that any of the causes for removal of an executor or administrator exist or have transpired, as specified in section seven hundred and eighty-three, it shall be the duty of such commissioner to cite such executor or administrator to appear and show cause why he should not be removed, and if he fail to appear or show sufficient cause an order shall be made removing him and revoking his letters; and it is the duty of the commissioner to exercise a supervisory control over the executor or administrator, to the end that he faithfully and diligently perform the duties of his trust according to law.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1100.

Sec. 790. **When deceased was a member of copartnership.** The executor or administrator of a deceased person who was a member of a copartnership shall include in the inventory of such person's estate, in a separate schedule, the whole of the property of such copartnership; and the appraisers shall estimate the value thereof, and also the value of such person's individual interest in the partnership property after the payment or satisfaction of all the debts and liabilities of the partnership.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1101; 15 Oreg., 145.

Sec. 791. **Right of surviving partner.** After the inventory is taken the partnership property shall be in the custody and control of the executor or administrator for the purpose of administration unless the surviving partner shall, within five days from the filing of the inventory, or such further time as the commissioner may allow, apply for the administration thereof and give the undertaking therefor hereinafter prescribed.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1102.

Sec. 792. **His powers and duties.** If the surviving partner apply therefor, as provided in the last section, he is entitled to the administration of the partnership estate if he have the qualifications and competency required for a general administrator. He is denominated an administrator of the partnership, and his powers and duties extend to the settlement of the partnership business generally and the payment or transfer of the interest of the deceased in the partnership property remaining after the payment or satisfaction of the debts and liabilities of the partnership to the executor or general administrator within six months from the date of his appointment, or such further time, if necessary, as the commissioner may allow. In the exercise of his powers and the performance of his duties the administrator of the partnership is subject to the same limitations and liabilities and control and jurisdiction of the court as a general administrator.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1103; 6 Oreg., 154; 15 id., 147.

Sec. 793. **Undertaking of administrator of the partnership.** The undertaking of the administrator of the partnership shall be in a sum not less than double the value of the partnership property and shall be given in the same

manner and be to the same effect as the undertaking of a general administrator.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1104.

Sec. 794. **When administration of partnership property devolves upon general administrator.** In case the surviving partner is not appointed administrator of the partnership, the administration thereof devolves upon the executor or general administrator; but before entering upon the duties of such administration he shall give an additional undertaking in double the value of the partnership property.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1105.

Sec. 795. **Duty of surviving partner towards administrator.** Every surviving partner, on the demand of an executor or administrator of a deceased partner, shall exhibit and give information concerning the property of the partnership at the time of the death of the deceased partner, so that the same may be correctly inventoried and appraised; and in case the administration thereof shall devolve upon the executor or administrator, such survivor shall deliver or transfer to him on demand all the property of the partnership, including all books, papers, and documents pertaining to the same, and shall afford him all reasonable information and facilities for the performance of the duties of his trust.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1106.

Sec. 796. **How last section may be enforced.** Any surviving partner who shall refuse or neglect to comply with the requirements of the last section may be cited to appear before the commissioner, and unless he show cause to the contrary the commissioner shall require him to comply with such section in the particular complained of.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1107.

Sec. 797. **Who not qualified to act as executor or administrator.** The following persons are not qualified to act as executors or administrators: Nonresidents of the district; minors; judicial officers; persons of unsound mind, or who have been convicted of any felony, or of a misdemeanor involving moral turpitude.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1108.

Sec. 798. **Form of letters testamentary.** Letters testamentary may be in the following form:

District of Alaska, } ss.
—— Precinct. }

To all persons to whom these presents shall come, greeting:

Know ye, that the will of ——— ———, deceased, a copy of which is hereto annexed, has been duly proven before the commissioner for the precinct aforesaid, and that ——— ———, who is named executor therein, has been duly appointed such executor by the commissioner aforesaid. This, therefore, authorizes the said ——— ——— to administer the estate of the said ——— ———, deceased, according to law.

In testimony whereof I have hereunto subscribed my name and affixed the seal of this court said ——— day of ———, A. D. 19——.

A B, Commissioner.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1109.

Sec. 799. **Form of letters of administration.** Letters of administration may be in the following form:

District of Alaska, } ss.
——— Precinct, }

To all persons to whom these presents shall come, greeting:

Know ye, that it appearing to the commissioner aforesaid that ——— ——— has died intestate, leaving at the time of his death property in this district, such commissioner has duly appointed ——— ——— administrator of the estate of such ——— ———, deceased; this, therefore, authorizes the said ——— ———, to administer the estate of the said ——— ———, deceased, according to law.

In testimony whereof, etc.

the same as in letters testamentary. Letters to an administrator of the partnership with the will annexed, or to a special administrator, may be issued according to the foregoing forms, with such variations as may be proper in the particular case.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1110.

Sec. 800. **Resignation of executor or administrator.** The commissioner, in his discretion, may allow an executor or administrator to resign when it appears that such executor or administrator is not in default in any matter connected with the duties of his trust. Such executor or administrator shall pay the cost of the proceeding, and if the application is allowed he shall surrender his letters to be cancelled, and his powers as such shall cease from that time forward.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1111; 12 Oreg., 114.

CHAPTER EIGHTY-TWO.

OF THE INVENTORY OF THE ESTATE.

Sec.
801. When and how made and verified.
802. What to contain.
803. Appraisement and appointment of appraisers.
804. Oath of appraisers.
805. Appraisement of money and debts.
806. Debt due by person named in will as executor.
807. Discharge or bequest of a claim by will.
808. Property discovered after filing inventory.
809. Who entitled to possession and control of property.
810. When person charged with secreting property or writings.
811. Mode of examination of such persons.
812. Proceeding in case such person refuses to appear.
813. Proceeding to compel account.
814. Damages for conversion before administration.

Sec. 801. **Making and filing inventory.** An executor or administrator shall, within one month from the date of his appointment, or such further time as the commissioner may allow, make and file with the commissioner an inventory, verified by his oath, of all the real and personal property of the deceased which shall come to his possession or knowledge.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1112; 10 Oreg., 520; 18 Oreg., 173.

Sec. 802. **What to contain.** The inventory shall contain an account of all money belonging to the deceased, or a statement that none has come to the possession or knowledge of the executor or administrator; also a statement of all debts due the deceased, the written evidence thereof, and the security therefor, if any exist, specifying the name of each debtor, the date of each written evidence of debt, the security therefor, the sum originally

payable, the endorsements thereon, if any, and their dates, and the sum appearing then to be due thereon.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1113; 18 Oreg., 170.

Sec. 803. **Appraisement and appointment of appraisers.** Before the inventory is filed the property therein specified shall be appraised at its true cash value by three disinterested and competent persons, who shall be appointed by the commissioner; but if any part of the property shall be in a precinct other than that wherein administration is granted, the appraisers thereof may be appointed by such commissioner or the commissioner of the precinct wherein the property shall be; in the latter case a certified copy of the order of appointment shall be filed with the inventory.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1114.

Sec. 804. **Oath of appraisers.** Before making the appraisement the appraisers shall each make an subscribe an affidavit, to be filed with the inventory, to the effect that he will honestly and impartially appraise the property which shall be exhibited to him according to the best of his knowledge and ability.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1115.

Sec. 805. **Appraisement of money and debts.** The appraisers shall appraise each article of property separately and set down the value thereof in dollars and cents opposite the entry of the article in the inventory. Money, of whatever nature, that is a legal tender is to be appraised at its nominal value; but debts of all descriptions or kinds are to be appraised at that sum which, in the judgment of the appraisers, may be realized from them by due process of law. When the appraisement is completed, the inventory shall be signed by the appraisers.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1116.

Sec. 806. **Debt due by person named in will as executor.** The naming any one executor in a will shall not operate to discharge such executor from any claim which the testator had against him, but the claim shall be included in the inventory; and if the person so named afterward take upon himself the administration of the estate he shall be liable for such sum as for so much money in his hands at the time the claim became due and payable; otherwise he is liable for such claim as any other debtor of the deceased.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1117.

Sec. 807. **Discharge or bequest of a claim by will.** The discharge or bequest in a will of any claim of the testator against a person named as executor therein, or against any other person, shall, as against the creditors of the deceased, be invalid. Such claim shall be included in the inventory, and for all purposes of administration is to be deemed and treated as a specific legacy of that amount.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1118.

Sec. 808. **Property discovered after filing inventory.** If after the filing of the inventory property not mentioned therein shall come to the knowledge or possession of the executor or administrator, it is his duty immediately to make an inventory thereof and cause the same to be appraised in the manner prescribed in this title and file the same with the commissioner.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1119.

Sec. 809. **Who entitled to the possession and control of property.** The executor or administrator is entitled to the possession and control of the property of the deceased, both real and personal, and to receive the rents and profits thereof until the administration is completed, or the same is sur-

rendered to the heirs or devisees by order of the court or judge thereof; but where such property, or any portion thereof, is in the possession of a third person, by virtue of a valid subsisting lease or bailment, the possession and control of the executor or administrator is subordinate to the right of the lessee or bailee. During the time the property is in the possession or control of the executor or administrator, it is his duty to keep the same in repair and preserve it from loss or decay as far as possible.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1120; 2 Oreg., 339; 5 id., 203; 8 id., 276; 20 id., 131; 23 id., 516; 29 id., 190, 202.

Sec. 810. **Where person charged with secreting property.** Whenever it appears probable from the affidavit of an executor or administrator, or of an heir or other person interested in the estate, that any person has concealed or in any way secreted or disposed of any property of the estate, or any writing relating or pertaining thereto, or that such person has knowledge of any such property or writing being so concealed, secreted, or disposed of, and refuses to disclose the same to the executor or administrator, the commissioner, upon the application of such executor or administrator, may cite such person to appear and answer under oath concerning the matter charged.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1121; 20 Oreg., 600.

Sec. 811. **Mode of examining such persons.** Such examination may be oral or upon written interrogatories filed by the applicant, but in either case the answers of the persons cited shall be reduced to writing and subscribed by him and filed. If such person be not in the precinct where administration is granted, the proceeding may be either before the commissioner of such precinct or before the commissioner of the precinct where such person resides or may be found. In the latter case a certified copy of the written interrogatories, if any, and the examination or other proceeding thereon, or connected therewith, shall be filed with the commissioner where administration is granted.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1122.

Sec. 812. **Proceedings where person refuses to appear.** If the person so cited refuses to appear or answer such interrogatories as may be allowed to be put to him touching the matter charged, he may be punished for a contempt or may at once be committed, by the warrant of the commissioner, to jail, there to remain in close custody until he submits to the order of the commissioner.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1123.

Sec. 813. **Proceedings to compel account.** The commissioner, upon the application of the executor or administrator, may cite any person who has been entrusted with any of the property of the deceased to appear and answer concerning the same when it appears probable that such person refuses or neglects to render to the executor or administrator a true account thereof. The application shall be made and the proceeding conducted in the manner prescribed in sections eight hundred and ten, eight hundred and eleven, and eight hundred and twelve, concerning property or writings alleged to be concealed, and with like effect.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1124; 20 Oreg., 600.

Sec. 814. **Damages for conversion.** If any person shall, before administration is granted, embezzle, alien, or in any way convert to his own use any of the property of a deceased person, he shall be liable to the executor or administrator in double the amount of damages which may be assessed therefor.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1125.

CHAPTER EIGHTY-THREE.

OF THE SUPPORT OF THE WIDOW AND MINOR CHILDREN.

Sec.
815. Provision for widow and minor children before administration.
816. Property to be set apart, and effect of.
817. Further order for support, when made.
818. When the whole of estate to be set apart to widow and children.
819. When estate all deemed assets.

Sec. 815. **Provision for widow and minor children before administration.** Until administration of the estate has been granted and the inventory filed, the widow and minor children of the deceased are entitled to remain in possession of the homestead, all the wearing apparel of the family, and household furniture of the deceased, and also to have a reasonable provision allowed for their support during such period, to be allowed by the commissioner.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1126; 8 Oreg., 276; 12 Id., 205; 29 Id., 202.

Sec. 816. **Property to be set apart.** Upon the filing of the inventory, the commissioner shall make an order setting apart for the widow or minor children of the deceased, if any, all the property of the estate by law exempt from execution. The property thus set apart, if there be a widow, is her property, to be used or expended by her in the maintenance of herself and minor children, if any; or if there be no widow, it is the property of the minor child, or if more than one, of the minor children, in equal shares, to be used and expended in the nurture and education of such child or children by the guardian thereof as the law directs.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1127; 23 Oreg., 469.

Sec. 817. **Further order for support, when made.** If the property so exempt is insufficient for the support of the widow and minor children, according to their circumstances and condition in life, for one year after the filing of the inventory, the commissioner may order that the executor or administrator pay to such widow, if any, and if not, then to the guardian of such minor children, an amount sufficient for that purpose.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1128; 28 Oreg., 99.

Sec. 818. **When whole estate set apart to widow and children.** If from the inventory of an intestate's estate, who died leaving a widow or minor children, it appears that the value of the estate does not exceed one hundred and fifty dollars over and above property exempt from execution, upon the filing of the inventory the commissioner shall make a decree providing that the whole of the estate, after the payment of funeral expenses and expenses of administration, be set apart for such widow or minor children in like manner and with like effect as in case of property exempt from execution. There shall be no further proceeding in the administration of such estate unless further property be discovered.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1129.

Sec. 819. **When estate all deemed assets.** If an intestate leave neither widow nor minor children, all the property of the estate is assets in the hands of the administrator, for the payment of funeral expenses, expenses of administration, payment of the debts of the deceased, or distribution according to law.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1130.

CHAPTER EIGHTY-FOUR.

OF CLAIMS AGAINST THE ESTATE.

Sec.
820. Publication of notice and contents thereof.
821. Proof of publication; effect of not presenting claim.
822. Claim, how presented, and verification of.
823. Claim to be allowed or rejected; if barred, not to be allowed.
824. Effect of judgment against executor or administrator.
825. Judgment against deceased in his lifetime.
826. When and how claim may be referred.
827. Proceeding by referee, and effect of.
828. Claim of executor or administrator.
829. How such claim may be determined.

Sec. 820. **Notice to creditors.** Every executor or administrator shall, immediately after his appointment, publish a notice thereof in some newspaper published in the precinct, if there be one, or otherwise in such paper as may be designated by the commissioner, as often as once a week for four successive weeks, and oftener if the commissioner shall so direct. In case of publication in a paper published without the precinct, the executor or administrator shall also post a notice in at least three public places, to be designated by the commissioner in his order, one of which shall be at or immediately adjacent to the post-office nearest the residence of the decedent at the time of his death. Such notice shall require all persons having claims against the estate to present them, with the proper vouchers, within six months from the date of such notice, to the executor or the administrator, at a place within the precinct therein specified.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1131; 29 Oreg., 493.

Sec. 821. **Effect of not presenting claim according to notice.** Before the expiration of the six months mentioned in the last section a copy of the notice as published, with the proper proof of publication, shall be filed with the commissioner. A claim not presented within six months after the first publication of the notice is not barred, but it can not be paid until the claims presented within that period have been satisfied, and if the claim be not then due, or if it be contingent, it shall nevertheless be presented as any other claim. Until the administration has been completed a claim against the estate not barred by the statute of limitations may be presented, allowed, and paid out of any assets then in the hands of the executor or administrator not otherwise appropriated or liable.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws s. 1132.

Sec. 822. **Claim, how presented and verified.** Every claim presented to the executor or administrator shall be verified by the affidavit of the claimant, or some one on his behalf who has personal knowledge of the facts, to the effect that the amount claimed is justly due, that no payments have been made thereon, except as stated, and that there is no just counterclaim to the same, to the knowledge of the affiant. When it appears or is alleged that there is any written evidence of such claim, the same may be demanded by the executor or administrator, or that its nonproduction be accounted for.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1133; 1 Oreg., 321; 5 id., 482; 8 id., 51.

Sec. 823. **Allowance or rejection of claim; if barred, not to be allowed.** When the claim is presented to the executor or administrator as prescribed in the last section, if he shall be satisfied that the claim thus presented is just, he shall indorse upon it the words "examined and approved," with the date thereof, and sign the same officially, and shall pay such claim in

due course of administration; but if he shall not be so satisfied, he shall indorse thereon the words "examined and rejected," with the date thereof, and sign the same officially. Every executor or administrator shall keep a list of all demands legally exhibited against the estate of the testator or intestate, and shall, every three months, file with the commissioner a statement of all such claims as have been presented, and whether the same have been allowed or rejected by him. If any executor or administrator shall refuse to allow any claim or demand against the deceased after the same may have been exhibited to him in accordance with the provisions of this act, the claimant may present his claim to the commissioner having jurisdiction or to the district court or the judge thereof for allowance, giving the executor or administrator thirty days' notice of such application to the court. The district court or the judge thereof shall have power to hear and determine in a summary manner all demands against any estate agreeably to the provisions of this chapter, and which have been so rejected by the executor or administrator, and shall cause a concise entry of the order of allowance or rejection to be made on the record, which order shall have the force and effect of a judgment, from which an appeal may be taken as in ordinary cases: Provided, No claim which shall have been rejected by the executor or administrator, as aforesaid, shall be allowed by any court, judge, referee, or jury, except upon some competent or satisfactory evidence other than the testimony of the claimant. No claim shall be allowed by the executor or administrator or the district court or judge which is barred by the statute of limitations.

Laws Oreg., Feb. 20, 1885; Hill's Ann. Laws, s. 1134; 29 Oreg., 111.

Sec. 824. **Effect of judgment against executor or administrator.** The effect of a judgment against an executor or administrator, on account of a claim against the estate of his testator or intestate, is only to establish the claim, as if it had been allowed by him, so as to require it to be satisfied in due course of administration, unless it appear that the complaint alleged assets in his hands applicable to the satisfaction of such claim, and that such allegation was admitted or found to be true, in which case the judgment may be enforced against such executor or administrator personally.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1135; 16 Oreg., 351.

Sec. 825. **Judgment against deceased in his lifetime.** A claim established by judgment against the deceased in his lifetime need not be verified by affidavit, but it is sufficient to present a certified copy of the judgment docket thereof to the executor or administrator for allowance or rejection, as in other cases; but this section is not to be construed to prevent an execution from being issued upon such judgment as elsewhere provided in this code.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1136; 18 Oreg., 496.

Sec. 826. **When and how claim may be referred.** If the executor or administrator doubt the validity of any claim presented to him, he may agree, in writing, with the claimant that an order of reference be made by the commissioner thereof concerning the same. Upon the filing of such agreement, the commissioner shall make the order accordingly.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1137.

Sec. 827. **Proceedings by referee, and effect of.** The referee shall proceed to hear and examine the matter, and report thereon to the commissioner, where the order of reference was made, in the same manner and with like effect as if the order was made in an action upon such claim.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1138.

Sec. 828. **Claim of executor or administrator.** If the executor or administrator is himself a creditor of the testator or intestate, his claim, duly verified, may be presented to the commissioner for allowance or rejection; but the allowance of such claim by such commissioner does not conclude a creditor, heir, or other person interested in the estate in any action or proceeding between such executor or administrator and such creditor, heir, or other person.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1139.

Sec. 829. **How such claim determined.** If the commissioner reject the claim of the executor or administrator, either in whole or in part, or in case the same is not presented for allowance, as provided in the last section, the executor or administrator may retain the amount thereof until the final settlement of his accounts, when, if the same is controverted or objected to by any person interested in the estate, the right of the executor or administrator to have the allowance claimed shall be tried and determined by the court. If the claim is not presented to the commissioner, as provided in the section last preceding, before it is barred by the statute of limitations, such claim can not be allowed, retained, or recovered.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1140; 20 Oreg., 310.

CHAPTER EIGHTY-FIVE.

OF THE SALE OF PROPERTY BY EXECUTORS OR ADMINISTRATORS.

Sec.
830. Sale of property, how made, and application therefor.
831. Order of sale of personal property.
832. Sales of property thereunder.
833. May be sold at private sale.
834. When real property may be sold where specially devised.
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837. Service of citation.
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845. Proceeding in case property appropriated insufficient.
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849. Assignment of contract and effect thereof.
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851. Order for the sale of mortgaged property.
852. Application of proceeds of sale.
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854. When debt not due, how satisfied.
855. Effect of order confirming sale.
856. Fraudulent or void conveyance of judgments of the deceased.
857. Order allowing proceedings to vacate.
858. Disposition of property recovered on such proceeding.

Sec. 830. **Sale of property, how made.** No sale of the property of an estate is valid unless made by order of the commissioner, as in this chapter prescribed, unless herein otherwise provided. The application for an order of sale shall be by the petition of the executor or administrator, and in case of real property a citation to the heirs and others interested in such property.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1141; 3 Oreg., 503; 4 id., 392; 5 id., 89; 7 id., 285; 9 id., 387; 10 id., 301; 16 id., 209; 18 id., 497.

Sec. 831. **Order for sale of personal property.** Upon the filing of the inventory the executor or administrator may make an application to sell the personal property of the estate for the purpose of paying the funeral charges, expenses of administration, the claims, if any, against the estate, and for the purposes of distribution; and it shall be the duty of the commissioner to grant such order, if in his judgment it is for the best interest of the estate, and to direct and prescribe the terms of sale upon which such property shall be sold, whether for cash or on credit.

Laws Oreg., Feb. 21, 1891; Hill's Ann. Laws, s. 1142; 23 Oreg., 10.

Sec. 832. **Manner of sale under order.** Thereafter the executor or administrator shall sell such personal property from time to time for the purposes specified in the last section, and as often and as much thereof as may be necessary. Such sale shall be conducted in the same manner as a sale of personal property on execution, unless otherwise provided in this chapter.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1143.

Sec. 833. **When sold at private sale; articles specially devised.** If, upon the application for an order of sale, or upon a subsequent application for that purpose, it appears to the commissioner that it would be for the interest of the estate, he may order that the executor or administrator may sell all the personal property of the estate or any article thereof at private sale. If any articles of personal property have been specially bequeathed, they are to be exempt from the operation of the order of sale so long as any property of the estate not specially devised or bequeathed remains unsold or appropriated to the purposes specified in section eight hundred and sixty-eight.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1144.

Sec. 834. **When real property may be sold.** When the proceeds of the sale of personal property have been exhausted, and the charges, expenses, and claims specified in section eight hundred and thirty-one have not all been satisfied, the executor or administrator shall sell the real property of the estate, or so much thereof as may be necessary for that purpose. If any of such real property have been specially devised, it shall be exempt from the operation of the order of sale in the same manner as personal property specially bequeathed.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1145; 10 Oreg., 301; 23 id., 10.

Sec. 835. **Petition for order of sale.** The petition for the order of sale of real property shall state the amount of the sales of personal property, the charges, expenses, and claims still unsatisfied, so far as the same can be ascertained, a description of the real property of the estate, the condition and probable value of the different portions or lots thereof, the amount and nature of any liens thereon, the names, ages, and residence of the devisees, if any, and of the heirs of the deceased, so far as known.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1146.

Sec. 836. **Citation to heirs and devisees.** Upon the filing of the petition a citation shall issue to the devisees and heirs therein mentioned, and to all others unknown, if any such there be, to appear at a time therein mentioned, not less than thirty days after the service of such citation, to show cause, if any exist, why an order of sale should not be made as in the petition prayed for.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1147.

Sec. 837. **Service of citation.** Upon an heir or devisee known and resident within the district such citation shall be served and returned as a summons,

and upon an heir or devisee unknown or nonresident it may be served by publication or posting, or both, not less than four weeks, or for such further time as the commissioner may prescribe. When service is had by posting, the citation shall be posted at not less than three public places within the precinct, one of which shall be the post-office nearest to the place where the decedent resided at the time of his death. When service of the citation is made by publication or posting, there shall be given with it a brief description of the property described in the petition.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1148.

Sec. 838. **Hearing and order of sale.** If, upon the hearing, the court find that it is necessary that the real property, or any portion thereof, should be sold, it shall make the order accordingly, and prescribe the terms thereof, whether of cash or credit, or both; and if such property can not be divided without probable injury and loss to the estate, it may order that it, or any specific lot or portion thereof, shall be sold wholly, whether otherwise necessary or not.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1149; 23 Oreg., 10.

Sec. 839. **Sale, how made and secured.** Upon the order being made, the executor or administrator shall sell the property therein specified upon the terms directed and in the manner herein otherwise provided. Such sale shall be made in the same manner as like property is sold on execution: Provided, however, The commissioner may, if thought best, order said property to be sold on the premises. When the sale is upon credit, the executor or administrator shall take the note of the purchaser for the purchase money, with a mortgage upon the property to secure the payment thereof.

Laws Oreg., Oct. 19, 1876; Hill's Ann. Laws, s. 1150.

Sec. 840. **Return of sale and objections thereto.** Within ten days after the sale of real property, the executor or administrator shall make a return of his proceedings concerning such sale. Upon such return, any of the persons cited to appear on the application for the order of sale may file his objections to the confirmation of such sale.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1151.

Sec. 841. **When sale confirmed and when vacated.** Upon the hearing the court shall confirm the sale, and decree that the executor or administrator make a conveyance to the purchaser, unless it appear that there were irregularities in the sale, or that the sum bidden for the property is disproportionate to the value thereof, and that a sum exceeding such bid at least ten per centum, exclusive of the expenses of a new sale, may be obtained therefor, in either of which cases the court shall make an order vacating the sale and directing that the property be resold; and upon such second sale the property, or any specific portion or lot thereof, ordered to be resold shall be sold as if no previous sale had taken place. In case no objections are made to the confirmation of the sale as provided in the section last preceding, the court shall nevertheless examine the proceedings concerning such sale, and if it appear proper, may make the order of resale provided for in this section in the same manner and with like effect as if objections had been filed thereto.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1152.

Sec. 842. **Recitals in conveyance.** A conveyance executed by an executor or administrator shall set forth the date of the order directing the sale, and the book, number thereof, and page containing the same, and the date

of the order confirming the sale and directing the conveyance, and the book, number thereof, and page containing the same, and the title of the court making such orders, and shall operate to convey all the estate, right, and interest of the testator or intestate in the premises at the time of his death.

Laws Oreg., Oct. 24, 1882; Hill's Ann. Laws, s. 1153; 25 Oreg., 490.

Sec. 843. **When real property sold to pay legacy, etc.** When a testator shall have specially bequeathed any specific article of personal property, or given any legacy by will, and there shall not be sufficient personal property, besides such specific article or the value of such legacy, to pay the funeral charges, expenses of administration, and claims against the estate, the executor or administrator shall obtain an order to sell the real property sufficient to make up the deficiency, in the manner hereinbefore provided.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1154.

Sec. 844. **Sale of property under will.** When the testator shall make provision in his will for the sale or disposition of all or any particular portion of his estate, for the payment of funeral charges, expenses of administration, or of claims against the estate, the property so appropriated may be sold or disposed of as directed by the executor or administrator with the will annexed, without an order of the court therefor; but he shall be bound to conduct the sale and make a return thereof in all respects as if it were made by order of the court, unless there are special directions in the will concerning the manner and terms of sale, in which case he shall be governed by such directions in such respects.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1155; 7 Oreg., 285; 16 id., 187.

Sec. 845. **When provisions by will insufficient.** If the provision made by the will or the property thereby appropriated be insufficient for the purpose intended, the remaining portion of the estate may be sold for that purpose, according to the provisions of this chapter.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1156.

Sec. 846. **Bequests and legacies, when liable for debts.** The property, real and personal, given by the will to any devisee or legatee, is liable for the payment of the funeral charges, expenses of administration, and of claims against the estate; and if there be more than one such devisee or legatee, then in proportion to the value or amount of the several devises and legacies; except that specific devises and legacies shall be exempt from such liability, if such appear to have been the intention of the testator, and there be other sufficient property to satisfy such charges, expenses, and claims.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1157.

Sec. 847. **Sale of contract for purchase of real property.** If the deceased was, at the time of his death, a party to a contract for the purchase of real property, his interest in such real property by virtue of such contract may be sold in the same manner as if such contract had been executed in the lifetime of the deceased, by a conveyance to him of such property according to the legal effect and terms of such contract.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1158.

Sec. 848. **Sale subject to payments to be made; undertaking of purchaser.** If there be any payments due, or to become due, on such contract, to the vendor of the deceased, the sale is made subject thereto, and before the same can be confirmed, or the contract assigned to the purchaser, such

purchaser shall execute an undertaking with one or more sufficient sureties in an amount not less than double the value of all the payments then due, or to become due, for the benefit of whom it may concern, to be void upon the condition that such purchaser will make all such payments according to the terms of such contract, and indemnify the executor or administrator, or others whom it may concern, against all damages, costs, and expenses by reason of any covenant or agreement contained in such contract.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1159.

Sec. 849. **Assignment of contract, and effect thereof.** The order of confirmation of such sale shall direct the executor or administrator to make an assignment of such contract to the purchaser, which assignment shall vest in the purchaser, his heirs and assigns, all the estate, right, and interest of the deceased at the time of his death in such real property, and give to the purchaser the same rights and remedies against the vendor thereof as the deceased would have had or been entitled to if living.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1160.

Sec. 850. **Order to redeem mortgaged property.** If the deceased left any property, real or personal, under mortgage, and did not devise or provide for the redemption of the same by will, the commissioner, upon the application of the executor or administrator, or the application of an heir or creditor, or other person interested in the estate, may order the executor or administrator to redeem such property out of the proceeds of the other personal property, if it appear that such redemption would be for the interest of the estate, and not prejudicial to creditors.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1161; 16 Oreg., 210.

Sec. 851. **Order for sale of mortgaged property.** If, upon such application, such redemption be deemed not proper or inexpedient, the commissioner shall order such property to be sold in like manner and with like effect as is provided in other cases of the sale of real property by this chapter; and the conveyance to the purchaser shall operate to convey to him all the estate, right, and interest which the deceased would have had in the property had not the same been mortgaged by him.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1162.

Sec. 852. **Application of proceeds of mortgaged property.** Ten days before making an order for the application of the proceeds of such sale the mortgagee or other person to whom the debt which is secured by such mortgage is payable shall be cited to appear and show the amount of his debt and make his objections, if any, to the report of the expenses of the proceeding and sale as claimed by the executor or administrator; and thereupon the court shall order that the proceeds of the sale be first applied to the payment of the proper expenses of the proceeding and sale, and secondly, to the satisfaction of such debt, and the residue, if any, in due course of administration.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1163.

Sec. 853. **When mortgage foreclosed before suit commenced.** The three sections last preceding shall not be construed to include a mortgage which has been foreclosed, or upon which a suit has been commenced for foreclosure before the application for the order of redemption or sale is made, nor to any other lien arising upon judgment or decree given against the deceased in his lifetime.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1164.

Sec. 854. When debt not due, how satisfied. If the debt secured by the mortgage mentioned in section eight hundred and fifty be not due at the time of the making of the order for redemption or application of the proceeds of sale, the party to whom it is payable shall be entitled to receive in satisfaction thereof such sum as may be ascertained to be equal to the present value thereof.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1165.

Sec. 855. Effect of confirmation; purchase by executor or administrator. The order of confirmation of sale in this chapter mentioned is conclusive as to the regularity of the sale and no further. All purchases of the property of the estate by an executor or administrator, however made, whether directly or indirectly, are prohibited, and if made are void.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1166.

Sec. 856. When executor or administrator to avoid fraudulent acts of the deceased. Whenever the assets of the estate are insufficient to satisfy the funeral charges, expenses of administration, and the claims against the estate, and the deceased shall in his lifetime have made or suffered any conveyance, transfer, or sale of any property, real or personal, or any right or interest therein, with intent to delay, hinder, or defraud creditors, or when such conveyance, transfer, or sale has been so made or suffered that the same is void in law as against creditors, or when the deceased in his lifetime has suffered, consented, or procured any judgment or decree to be given against him with such intent or in such manner as to be likewise void, it is the duty of such executor or administrator to make application by petition to the commissioner for leave to commence and prosecute to final judgment or decree the necessary and proper actions or proceedings to have such conveyance, transfer, sale or judgment, declared void, and the property affected thereby discharged from the effect thereof.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1167; 5 Oreg., 263; 15 Id., 381.

Sec. 857. Order allowing proceedings therefor. If upon the application it appear to such commissioner that the assets are insufficient for the purposes specified in the last section, and that it is probable that the conveyance, transfer, or judgment was made, suffered, consented to, or procured with the intent or in the manner specified in the last section, he shall make the order directing the proceedings to be commenced and prosecuted as to any or all of the matters alleged in the petition and necessary to supply the deficiency in the assets.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1168.

Sec. 858. Disposition of property recovered. The property recovered by means of any proceeding in pursuance of the last two sections is to be sold and appropriated to supply the deficiency mentioned in section eight hundred and fifty-six in the same manner as other like property; but the right to or interest in the surplus, if any, remains as if such proceeding had not been allowed or commenced.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1169.

CHAPTER EIGHTY-SIX.

OF THE ACCOUNTS OF EXECUTORS AND ADMINISTRATORS

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859. When filed and what to contain.
860. Proceeding if administrator neglect to file account.
861. Order for the payment of expenses, charges, and claims.
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867. Expenses and compensation of administrator.
868. Same subject.
869. Amount of compensation.
870. Proceeding in case of neglect to file final account.
871. Administrator may compound for debt due estate.

Sec. 859. **Account of executor and administrator.** An executor or administrator shall, within six months from the date of the notice of his appointment, and every six months thereafter until the administration is completed and he is discharged from his trust, render an account, verified by his own oath, and file the same with the commissioner, showing the amount of the money received and expended by him, from whom received and to whom paid, with the proper vouchers for such payments, the amount of the claims presented against the estate and allowed or disallowed and the name of the claimants of each, and any other matter necessary to show the condition of the affairs thereof.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1170; 19 Oreg., 183.

Sec. 860. **Proceeding if administrator neglect to file account.** An executor or administrator who shall fail to file an account as required in the last section may be required by a citation or ordered by a commissioner to appear and do so, either upon the application of an heir or creditor, or other person interested in the estate, or without it. If the executor or administrator refuses or neglects to appear when cited, or to file the account as required, he may be punished as for a contempt, or by warrant of the commissioner be committed to close custody in jail until he consent to do so.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1171.

Sec. 861. **Payment of expenses, charges, and claims.** Within thirty days after the filing of the first semiannual account and at each semiannual account thereafter, the commissioner shall ascertain and determine if the estate be sufficient to satisfy the claims allowed by the executor or administrator, within the first six months or any succeeding period of six months thereafter, after the date of the notice of his appointment, after paying the funeral charges and expenses of administration; and if so, he shall so order and direct; but if the estate be insufficient for that purpose, he shall ascertain what per centum of such claims it is sufficient to satisfy, and order and direct accordingly.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1172; 19 Oreg., 183.

Sec. 862. **Final account, when filed, and what to contain.** When the estate is fully administered it shall be the duty of the executor or administrator to file his final account. Such account shall be verified and contain a detailed statement of the amount of money received and expended by him, from whom received and to whom paid, and refer to the vouchers for such payments, and the amount of money and property, if any, remaining unexpended or

unappropriated. Upon the filing of the final account, the commissioner shall make an order directing notice thereof to be given in the same manner as the notice of an appointment of an executor or administrator, and appoint a day not less than sixty days subsequent thereafter for the hearing of objections to such final account and the settlement thereof.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1173; 29 Oreg., 347.

Sec. 863. **Objections to final account, by whom, and when made.** An heir, creditor, or other person interested in the estate may, on or before the day appointed for such hearing and settlement, file his objections thereto, or to any particular item thereof, specifying the particulars of such objections; but no creditor shall be allowed to object to such account whose claim has been satisfied, as allowed by the executor or administrator, or established by judgment.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1174.

Sec. 864. **Decree upon final account, and effect thereof.** Upon the hearing the court shall give a decree allowing or disallowing the final account, either in whole or in part, as may be just and right; and such decree in any other action or proceeding between the parties interested or their representatives is primary evidence of the correctness of the account as thereby allowed and settled.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1175; 17 Oreg., 88.

Sec. 865. **Administrator chargeable with amount of inventory.** An executor or administrator is chargeable in his account with all the property of the estate which may come into his possession, at the value of the appraisement contained in the inventory, except as in this chapter otherwise provided.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1176.

Sec. 866. **For what administrator responsible.** He shall not make profit by the increase in value of the property of the estate, or suffer loss for the decrease in value or the destruction thereof, without his fault; and if any of the property of the estate sell for more than its appraised value, he shall account for the excess, and if any such property sell for less than its appraised value, he shall not be responsible for the loss, unless occasioned by his fault. He shall not be accountable for the debts due the estate, if it appear that they remain uncollected without his fault. He shall not purchase any claim against the estate which he represents, and if he satsifies any such claim for less than its nominal value, he is only entitled to charge in his account the sum actually paid.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1177.

Sec. 867. **Expenses and compensation of administrator.** An executor or administrator shall be allowed, in the settlement of his account, all necessary expenses incurred in the care, management, and settlement of the estate, including reasonable attorney's fees in any necessary litigation or matter requiring legal advice or counsel. For his services he shall receive such compensation as the law provides; but when the deceased, by his will, has made special provision for the compensation of his executor, such executor is not entitled to any other compensation for his services, unless he shall, within ten days after his appointment, subscribe and file with the commissioner a written declaration renouncing the compensation provided by the will.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1178.

Sec. 868. **When commissioner to reduce compensation provided by will.** Notwithstanding the provision in the will for the compensation of an executor,

if the estate be insufficient to satisfy the claims against it, the commissioner shall reduce such compensation, so far as may be necessary to satisfy such claims, to an amount equal to what the executor would have been entitled to if no such provision had been made.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1179.

Sec. 869. **Amount of compensation.** The compensation provided by law for an executor or an administrator is a commission upon the whole estate accounted for by him, as follows:

First. For the first thousand dollars, or any less sum, at the rate of seven per centum thereof;

Second. For all above that sum and not exceeding two thousand dollars, at the rate of five per centum thereof;

Third. For all above two thousand and not exceeding four thousand dollars, at the rate of four per centum thereof;

Fourth. For all above the last-mentioned sum, at the rate of two per centum thereof.

In all cases, such further compensation as is just and reasonable may be allowed by the commissioner for any extraordinary and unusual services, not ordinarily required of an executor or administrator in the discharge of his trust.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1180; 11 Oreg., 532.

Sec. 870. **Proceedings in case of neglect to file final account.** Before the time appointed for the hearing and settlement of a final account, the executor or administrator shall file with the commissioner a copy of the notice thereof, with the proper proof of its publication or posting as directed. An executor or administrator who shall fail to file his final account as provided in section eight hundred and sixty-two may be proceeded against in like manner and with like effect as provided in section eight hundred and sixty in case of failure to file a semiannual account.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1181; 29 Oreg., 347.

Sec. 871. **Administrator may compound for debts due estate.** Whenever a debtor of a deceased person is unable to pay all his debts, an executor or administrator, by an order of the commissioner, may compound with him and give him a discharge upon receiving a fair and just proportion of his effects; but if such compounding is procured or produced by the fraudulent representations or conduct of such debtor, such payment shall only operate to discharge a like amount of the debt.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1182.

CHAPTER EIGHTY-SEVEN.

OF THE PAYMENT OF CLAIMS AND CHARGES.

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Sec. 872. **Order of payment of charges and claims.** The charges and claims against the estate which have been presented and allowed or presented and disallowed, but subsequently established by judgment within the first six months after the date of the notice of appointment of the executor or administrator, shall be paid in the following order, and those presented and allowed or established in like manner with each succeeding period of six months thereafter during the continuance of the administration in the same manner: First, funeral charges; second, taxes of whatever nature due the United States; third, expenses of last sickness; fourth, all other taxes of whatever nature; fifth, debts preferred by the laws of the United States; sixth, debts which at the death of the deceased were a lien upon his property or any right or interest therein according to the priority of their several liens; seventh, debts due employee of decedent for wages earned within the ninety days immediately preceding the death of the decedent; eighth, all other claims against the estate.

Laws Oreg., Feb. 20, 1891; Hill's Ann. Laws, s. 1183; 18 Oreg., 498.

Sec. 873. **Proceeds of real property, when applied in satisfaction of lien.** The preference given by subdivision six of the last section shall extend only to the proceeds of the property upon which the lien exists, and as to such proceeds such debt is to be preferred to any of the classes mentioned in such section other than the taxes upon such property.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1184.

Sec. 874. **How judgment or decree given in lifetime of deceased satisfied.** If such debt has been established by judgment against the deceased in his lifetime, such judgment if the proceeds of the personal property be not sufficient to satisfy it, may, in the discretion of the commissioner, be either satisfied from the proceeds of the sale of the property by the executor or administrator upon which it is a lien, or enforced by execution against such property. Such sale by the executor or administrator discharges the property from the lien of the judgment, but the same attaches to the proceeds thereof, after deducting therefrom the expenses of sale.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1185; 11 Oreg., 496.

Sec. 875. **When payments made in proportion.** Except as specially provided in the last three sections, if the estate be insufficient to pay all the claims and charges of any one class, payable within any period of six months during the administration, as provided in section eight hundred and seventy-two, each creditor of such class shall be paid in proportion to the amount of his claim, and not otherwise.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1186.

Sec. 876. **Funeral charges, who may incur and when allowed.** The executor named in the will, or if there be none, or if he do not attend to it, then the husband, widow, or next of kin, in the order herein named, are authorized to incur funeral charges on account of the estate in the burial of the deceased before administration of the estate is granted, and the burial of the deceased may be in a manner and at a cost according to his circumstances and condition in life; but no funeral charges, except those necessary to give the deceased a plain and decent burial, shall be allowed

out of the estate where the assets are not sufficient to satisfy all other claims against it, including the legacies and devises, if there be any.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1187.

Sec. 877. **Administrator may retain compensation and expenses.** The executor or administrator may retain in his hands, in preference to any claim or charge against the estate, the amount of his own compensation and the necessary expenses of administration.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1188.

Sec. 878. **Debts, not due or contingent, how paid.** A debt due and payable is not entitled to preference over one of the same class not due if the latter be presented within the same period. A debt not due, whether contingent or absolute, upon being presented shall, if absolute, be satisfied by the payment of such sum as the commissioner may prescribe by order to be equal to its present value, and if contingent, by the payment into court for the benefit of the creditor, subject to the contingency, of a sum, to be ascertained in like manner, equal to its present value.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1189.

Sec. 879. **Administrator liable to creditor personally, when.** When, upon the filing of a semiannual account, an order is made determining and prescribing the amount of assets applicable to the claims then presented, as provided in section eight hundred and sixty-one, thereafter the executor or administrator is personally liable to each creditor included in such order for such amount.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1190; 18 Oreg., 498.

Sec. 880. **Distribution and payment of legacies.** If all the charges and claims shall have been satisfied upon the first distribution of the assets, or as soon thereafter as they may be, the commissioner shall direct the payment of legacies and the distribution of the remaining proceeds of the personal property among the heirs or other persons entitled thereto.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1191.

Sec. 881. **When real property discharged from administration.** The real property of the deceased is the property of those to whom it descends by law or is devised by will, subject to the possession of the executor or administrator, and to be applied to the satisfaction of claims against the estate, as by this chapter provided; but upon the settlement of the estate and the termination of the administration thereof so much of such real property as remains unsold or unappropriated is discharged from such possession and liability without any order or decree therefor. But if there be any surplus of the proceeds of sale of such real property, or any part thereof, the commissioner shall order and direct a distribution of such surplus among those who would have been entitled to such land if the same had not been sold.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1192; 8 Oreg., 277; 29 Oreg., 190.

Sec. 882. **Application of heir or other person for share of real estate.** At any time after the filing of the first semiannual account any heir, devisee, or legatee may apply to the commissioner by petition for an order that he have the possession and rents and profits thereof of the portion of the real property to which he may be entitled, and that payment be made to him of his legacy or distributive share of the personal property of such estate as the case may be.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1193; 29 Oreg., 190.

Sec. 883. **Notice of application and proceedings thereon.** Notice of the application shall be given to the executor or administrator thirty days before the time at which it is made. If upon the hearing it appear that the estate is but little in debt, the commissioner may, in his discretion, grant the petition or some part thereof upon the condition that such applicant file with the commissioner within a time in the order specified, an undertaking, with one or more sufficient sureties, for the benefit of whom it may concern, in a sum double the value of such real property, legacy, or distributive share, to be void upon the condition that such heir, legatee, or devisee will pay, when required, his portion towards satisfying any claim against the estate.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1194.

Sec. 884. **Qualification of sureties to undertaking.** The sureties in such undertaking shall have the same qualifications as sureties in bail upon arrest, and shall justify before the commissioner in like manner. The costs of the proceeding shall be paid by the applicant.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1195.

Sec. 885. **Application for decree to refund.** If after the giving of such undertaking it shall become necessary to satisfy any claim against the estate, to require the payment of all or any part of the sum therein specified, it shall be the duty of the executor or administrator to apply by petition to the commissioner for a decree to that effect. Notice of the application shall be given to the party filing the undertaking twenty days before the time at which the application is made.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1196.

Sec. 886. **Proceeds thereof, and how decree enforced.** If upon the hearing it appear necessary and proper that such payment should be made, the commissioner shall decree accordingly, specifying therein the amount to be paid, and within what time; and if the amount be not paid within the time specified, the decree may be enforced against such party and the sureties in the undertaking, by execution, in the same manner as a judgment in the district court.

Laws Oreg., Oct. 11, 1862; Hill's Ann. Laws, s. 1197.

CHAPTER EIGHTY-EIGHT.

OF GUARDIANS AND WARDS.

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Sec. 887. **Next of kin to be guardian.** Whenever it becomes the duty of a commissioner to appoint a guardian for a minor, the relatives of such minor, whether male or female, upon application to the commissioner shall in all cases be appointed, the nearest relative having precedence: Provided, Said applicant shall be of good moral character and be otherwise competent to discharge the duties of guardian to such ward.

Laws Oreg., Jan. 20, 1857; Hill's Ann. Laws, s. 2879.

Sec. 888. **Commissioner to appoint guardian.** The commissioner for each precinct, when it shall appear to him necessary or convenient, may appoint guardians to minors and others being inhabitants or residents in such precinct, and also such as shall reside without the district and have any estate within the same.

Laws Oreg., Dec. 15, 1863; Hill's Ann. Laws, s. 2880.

Sec. 889. **Who to nominate guardian.** If the minor is under the age of fourteen years the commissioner may nominate and appoint his guardian, and if he be above that age he may nominate his own guardian, who, if approved by the commissioner having jurisdiction of the estate, shall be appointed accordingly; and if the guardian nominated by such minor shall not be approved by such commissioner, or if the minor shall reside without the district, or if, after having been cited by the commissioner, he shall neglect to nominate a suitable person, the commissioner may nominate and appoint the guardian in the same manner as if the minor were under fourteen years of age.

Laws Oreg., Dec. 15, 1863; Hill's Ann. Laws, s. 2881.

Sec. 890. **Powers and duties of guardian.** Every guardian so appointed shall have the custody and tuition of the minor, and the care and management of his estate, and shall continue in office until the minor shall have arrived at the age of twenty-one years, or until the guardian shall have been discharged according to law: Provided, however, The father of the minor, if living, and in case of his death the mother, while she remains unmarried, being themselves respectively competent to transact their own business, shall be entitled to the custody of the person of the minor and to the care of his education.

Laws Oreg., Dec. 15, 1863; Hill's Ann. Laws, s. 2883.

Sec. 891. **Bond of guardian.** Every such guardian shall give bond, with surety or sureties, to the United States, in such sum as the commissioner may order, with conditions as follows:

First. To make a true inventory of all the real estate, and of all goods, chattels, rights, and credits of the ward that shall come to his possession or knowledge, and to return the same to the commissioner at such time as the latter may order;

Second. To dispose of and manage all such estate and effects according to law and for the best interest of the ward, and faithfully to discharge his trust in relation thereto, and in relation to the custody, education, and maintenance of the ward;

Third. To render, on oath, an account of the property in his hands, including the proceeds of all real estate sold by him, and of the management and disposition of all such property, within a year after his appointment, and at such other times as the commissioner shall direct;

Fourth. At the expiration of his trust, to settle his accounts with the commissioner or with the ward or his legal representatives, and to pay and deliver over all the estate and effects remaining in his hands, or due from him

on such settlement, to the person or persons who shall be legally entitled thereto.

Laws Oreg., Dec. 15, 1863; Hill's Ann. Laws, s. 2884.

Sec. 892. **Testamentary guardian.** Every father may, by his last will in writing, appoint a guardian or guardians for any of his children, whether born at the time of making the will or afterwards, to continue during the minority of the child or for a less time. And every mother may, by her last will in writing, appoint a guardian or guardians for any of her children, to continue during the minority of the child or for a less time: Provided, The father of such child or children is dead and has not appointed a guardian, or whenever, by judgment of divorce between such father and mother, the custody of such child or children has been awarded to the mother; and every such testamentary guardian shall have the same powers and perform the same duties with regard to the person and estate of the ward as a guardian appointed by the commissioner: Provided, Nothing in this section shall be construed to deprive either the surviving father or mother of the custody of the person of his or her children, such surviving parent being competent to transact his or her own business.

Laws Oreg., Dec. 15, 1863; Hill's Ann. Laws, s. 2885.

Sec. 893. **Bond of testamentary guardian.** Every such testamentary guardian shall give bond in like manner and with like conditions as is before required of a guardian appointed by the commissioner: Provided, When the testator in the will appointing the guardian shall have ordered or requested that such bond shall not be given the bond shall not be required, unless from a change in the situation or circumstances of the guardian, or for other sufficient cause, the commissioner shall think proper to require it.

Laws Oreg., Dec. 15, 1863; Hill's Ann. Laws, s. 2886.

Sec. 894. **Guardian in judicial proceedings.** Nothing contained in this chapter shall impair the power of the district court or courts of a justice of the peace to appoint a guardian to defend the interests of any minor impleaded in such courts or interested in any suit or matter therein pending, nor their power to appoint or allow any person as next friend for a minor to commence, prosecute, or defend any suit in his behalf.

Laws Oreg., Dec. 15, 1863; Hill's Ann. Laws, s. 2887.

Sec. 895. **Guardians for insane persons, etc.** Commissioners in their respective precincts shall have power to appoint guardians to take care, custody, and management of the estates, real and personal, of all insane persons, idiots, and all who are incapable of conducting their own affairs, and the maintenance of their families and the education of their children.

Laws Oreg., Sept. 27, 1862; Hill's Ann. Laws, s. 2888.

Sec. 896. **Guardian for insane person.** When the relatives or friends of any insane person, or any other persons, inhabitants of the precinct in which such insane person resides, shall apply to the commissioner by petition in writing to have a guardian appointed for him, the commissioner shall cause notice to be given to the supposed insane person of the time and place appointed for hearing the case, not less than ten days before the time so appointed; and if, after a full hearing, it shall appear to the commissioner that the person in question is incapable of taking care of himself, the commissioner shall appoint a guardian of his person and estate, with the powers and duties hereinafter specified.

Laws Oreg., Dec. 15, 1863; Hill's Ann. Laws, s. 2889.

Sec. 897. **Powers and duties of guardian of insane person.** Every guardian so appointed for an insane person shall have the care and custody of the person of the ward and the management of all his estate, and he shall give bond to the United States in like manner and in like conditions as is before prescribed with respect to the guardian of a minor, excepting that the provision relating to the education of the ward shall be omitted in the condition of the bond.

Laws Oreg., Dec. 15, 1863; Hill's Ann. Laws, s. 2890.

Sec. 898. **Guardian for spendthrift.** When any person, by excessive drinking, gaming, idleness, or debauchery of any kind shall so spend, waste, or lessen his estate as to expose himself or his family to want or suffering, the commissioner for such precinct of which such spendthrift is a resident or inhabitant shall cause notice to be given to such supposed spendthrift of the time and place appointed for hearing the case, not less than ten days before the time so appointed; and if, after a full hearing, it shall appear to the commissioner that the person complained of comes within the description contained in this section, he shall appoint a guardian of his person and estate, with the powers and duties hereinafter specified.

Laws Oreg., Dec. 15, 1863; Hill's Ann. Laws, ss. 2891, 2892.

Sec. 899. **Order of notice to be filed with the clerk of district court.** After the order of notice has been issued, the commissioner shall cause a copy of the same to be filed in the office of the clerk of the district court, and if a guardian shall be appointed on such application, all contracts, excepting for necessaries, and all gifts, sales, or transfers of real or personal estate made by such spendthrift after such filing of the order of notice in the office of the district court, and before the termination of the guardianship, shall be null and void.

Laws Oreg., Dec. 15, 1863; Hill's Ann. Laws, s. 2893.

Sec. 900. **Allowance for defense of ward.** When a guardian shall be appointed for an insane person or spendthrift, the commissioner shall make an allowance, to be paid by the guardian, for all reasonable expenses incurred by the ward in defending himself against the proceeding.

Laws Oreg., Dec. 15, 1863; Hill's Ann. Laws, s. 2894.

Sec. 901. **Guardian for spendthrift, powers and duties.** Every guardian so appointed for a spendthrift shall have the care and custody of the person of the ward and the management of all his estate until the guardian shall be legally discharged; and he shall give bond to the United States in like manner and with like condition as is before directed with respect to the guardian of an insane person.

Laws Oreg., Dec. 15, 1863; Hill's Ann. Laws, s. 2895.

Sec. 902. **Payment of debts in settlement of accounts.** Every guardian appointed under the provisions of this chapter shall pay all just debts due from his ward out of his personal estate, if sufficient, and if not, out of his real estate, upon obtaining a license for the sale thereof, as provided by law; he shall also settle all accounts of the ward, and demand, sue for, and receive all debts due to him, or may, with the approbation of the commissioner, compound for the same, and give a discharge to the debtor upon receiving a fair and just dividend of his estate and effects; and he shall appear for and represent his ward in all legal actions and proceedings, unless when another person is appointed for that purpose as guardian or next friend.

Laws Oreg., Dec. 15, 1863; Hill's Ann. Laws, s. 2896.

Sec. 903. **Management of ward's estate.** The guardian shall also manage the estate of his ward frugally and without waste, and apply the income and

profits thereof, so far as may be necessary, for the comfortable and suitable maintenance and support of the ward and his family, if there be any; and if the income and profits be insufficient for that purpose, the guardian may sell the real estate, upon obtaining a license therefor as provided by law, and shall apply the proceeds of such sale, so far as may be necessary, for the maintenance and support of the ward and his family.

Laws Oreg., Dec. 15, 1863; Hill's Ann. Laws, s. 2897.

Sec. 904. **Inventory and appraisal of the ward's estate.** Upon the taking of any inventory, as required by this chapter, the estate and effects comprised therein shall be appraised by three suitable persons, to be appointed and sworn in like manner as is required with respect to the inventory of a deceased testator or intestate; and every guardian shall account for and dispose of the personal estate of his ward in like manner as is directed with respect to executors and administrators.

Laws Oreg., Dec. 15, 1863; Hill's Ann. Laws, s. 2898.

Sec. 905. **Management and investment of property.** Commissioners in their respective precincts, on the application of a guardian or any person interested in the estate of any ward, after notice to all other persons interested, may authorize or require the guardian to sell and transfer any stock in the public funds, or in any bank, insurance company, or other corporation, or any other personal estate or effects held by him as guardian, and invest the proceeds of such sale, and also all of the moneys in his hands, in real estate, or in any other manner that shall be most for the interest of all concerned therein; and such commissioner may make such further order and give such directions as the case may require for managing, investing, and disposing of the estate and effects in the hands of the guardian.

Laws Oreg., Dec. 15, 1863; Hill's Ann. Laws, s. 2899.

Sec. 906. **Removal or resignation of guardian.** When any guardian appointed either by a testator or by a commissioner shall become insane or otherwise incapable of discharging his trust, or be unsuitable therefor, the commissioner, after notice to such guardian and to all others interested, may remove him; and every guardian, upon his request, may be allowed to resign his trust when it shall appear to the commissioner proper to allow the same; and upon every such resignation or removal, and also upon the death of any guardian, the commissioner shall appoint another in his stead.

Laws Oreg., Dec. 15, 1863; Hill's Ann. Laws, s. 2900.

Sec. 907. **Marriage of female ward.** The marriage of any female who is under guardianship as a minor shall operate as a discharge of her guardian; and the guardian of any insane person or spendthrift may be discharged by the commissioner when it shall appear, on the application of the ward or otherwise, that such guardianship is no longer necessary.

Laws Oreg., Dec. 15, 1863; Hill's Ann. Laws, s. 2901.

Sec. 908. **New bond.** The commissioner may require a new bond to be given by any guardian, and may discharge the existing sureties from future responsibility, in the like case and upon the like terms as are prescribed with regard to executors or administrators.

Laws Oreg., Dec. 15, 1863; Hill's Ann. Laws, s. 2902.

Sec. 909. **Action against sureties on guardian's bond.** No action shall be maintained against the sureties on any bond given by a guardian unless it be commenced within three years from the time when such guardian shall be discharged: Provided, If at the time of such discharge the person entitled to

bring such action shall be out of the district the action may be commenced at any time within three years after his return to the district.

Laws Oreg., Dec. 15, 1863; Hill's Ann. Laws, s. 2903.

Sec. 910. **Proceedings in case of suspected embezzlement.** Upon complaint made to the commissioner by any guardian or by the ward, or by any creditor or other person interested in his estate, or by persons having claims thereto in expectancy, as heir or otherwise, against anyone suspected of having concealed, embezzled, or conveyed away any of the money, goods, or effects of the ward, the commissioner may cite and examine such suspected person and proceed with him as to such charge in the same manner as is provided respecting persons suspected of concealing or embezzling effects of a deceased testator or intestate.

Laws Oreg., Dec. 15, 1863; Hill's Ann. Laws, s. 2904.

Sec. 911. **Guardians for nonresident minors.** When any minor or other person likely to be put under guardianship according to the provisions of this chapter shall reside without the district and shall have any estate therein, any friend of such person, or anyone interested in his estate, in expectancy or otherwise, may apply to the commissioner of any precinct in which there may be any estate of such absent person, and after notice to all persons interested, to be given in such manner as the commissioner shall order, and after a full hearing and examination, if it shall appear proper the commissioner may appoint a guardian for such absent person.

Laws Oreg., Dec. 15, 1863; Hill's Ann. Laws, s. 2905.

Sec. 912. **Powers and duties of such guardian.** Every guardian appointed according to the provisions of the preceding section shall have the same powers and duties with respect to any estate of the ward that may be found within the district, and also with respect to the person of the ward if he shall come to reside therein, as are prescribed to any other guardian appointed by force of this chapter.

Laws Oreg., Dec. 15, 1863; Hill's Ann. Laws, s. 2906.

Sec. 913. **Bond of.** Every such guardian shall give bond to the United States, in like manner and with like condition as is above provided with respect to other guardians, excepting that the provisions respecting the inventory, the disposal of the estate, and the account to be rendered by the guardian shall be confined to such estate and effects which shall come to his hands in the district, and that the provisions respecting the custody of the ward shall not be applicable unless the ward shall come to reside in the district.

Laws Oreg., Dec. 15, 1863; Hill's Ann. Laws, s. 2907.

Sec. 914. **First guardianship exclusive.** The guardianship which shall first be legally granted of any person residing without the district shall extend to all the estate of the ward within the same and shall exclude the jurisdiction of the commissioner of any other precinct.

Laws Oreg., Dec. 15, 1863; Hill's Ann. Laws, s. 2908.

Sec. 915. **Expenses and compensation.** Every guardian shall be allowed the amount of all his reasonable expenses incurred in the execution of his trust, and shall also have such compensation for his services as the commissioner before whom his accounts are settled shall consider just and reasonable.

Laws Oreg., Dec. 15, 1863; Hill's Ann. Laws, s. 2909.

Sec. 916. **Joint account.** When an account is rendered by two or more

joint guardians, the commissioner may, in his discretion, allow the same upon the oath of any one of them.

Laws Oreg., Dec. 15, 1863; Hill's Ann. Laws, s. 2910.

Sec. 917. "Insane person" and "spendthrift" defined. The words "insane person" are intended to include every idiot, every person not of sound mind, every lunatic and distracted person; and the word "spendthrift" is intended to include anyone who is liable to be put under guardianship on account of excessive drinking, gaming, idleness, or debauchery; and these words shall be so construed in all the provisions relating to guardians and wards contained in this code.

Laws Oreg., Dec. 15, 1863; Hill's Ann. Laws, s. 2911.

CHAPTER EIGHTY-NINE.

OF THE SALE OF LANDS BY GUARDIAN, AND DISPOSITION OF PROCEEDS.

Sec.
918. When guardian may sell real property of ward.
919. Proceeds to be placed on interest.
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937. Certain irregularities not to avoid sale.
938. Liability of guardian for misconduct.
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Sec. 918. When guardian may sell real property of ward. When the income of the estate of any person under guardianship, whether as a minor, insane person, or spendthrift, shall be insufficient to maintain the ward and his family, his guardian may sell his real estate for that purpose, upon obtaining a license therefor and proceeding therein in the manner hereinafter provided.

Laws Oreg., Dec. 15, 1863; Hill's Ann. Laws, s. 3113; 5 Oreg., 508; 14 ibid., 143.

Sec. 919. Proceeds to be placed on interest. When it shall appear upon the representation of any such guardian that it would be for the benefit of his ward that his real estate, or any part thereof, should be sold, and the proceeds thereof be put out on interest or invested in some productive stock, his guardian may sell the same accordingly, upon obtaining a license therefor and proceeding therein as hereinafter provided.

Laws Oreg., Dec. 15, 1863; Hill's Ann. Laws, s. 3114.

Sec. 920. Application of proceeds. If the estate be sold for the maintenance of the ward and his family, as provided in section nine hundred and eighteen, the guardian shall apply the proceeds of the sale for that purpose, so far as necessary, and shall put out the residue, if any, on interest, or invest it in the best manner in his power, until the capital shall be wanted for the maintenance of the ward and his family, in which case the capital may be

used for that purpose, so far as may be necessary, in like manner as if it had been the personal estate of the ward.

Laws Oreg., Dec. 15, 1863; Hill's Ann. Laws, s. 3115.

Sec. 921. **Investment of proceeds.** If the estate is sold in order to put out and invest the proceeds as provided in section nine hundred and nineteen, the guardian shall make the investment according to his best judgment, or in pursuance of any order of the commissioner relating thereto.

Laws Oreg., Dec. 15, 1863; Hill's Ann. Laws, s. 3116.

Sec. 922. **Residue, when considered as real estate.** In every case of the sale of real estate as provided in this chapter, the residue of the proceeds, if any remain upon the final settlement of accounts of the guardianship, shall be considered as real estate of the ward and shall be disposed of among the same persons and in the same manner as the real estate would have been if it had not been sold.

Laws Oreg., Dec. 15, 1863; Hill's Ann. Laws, s. 3117.

Sec. 923. **Petition for license to sell.** In order to obtain a license for such sale, the guardian shall present to the commissioner of the precinct in which he was appointed guardian a petition therefor, setting forth the condition of the estate of his ward, and the facts and circumstances under which it is founded, tending to show the necessity or expediency of such a sale, which petition shall be verified by the oath of the petitioner.

Laws Oreg., Dec. 15, 1863; Hill's Ann. Laws, s. 3118.

Sec. 924. **Order to show cause.** If it shall appear to the commissioner from such petition that it is necessary or would be beneficial to the ward that such real estate or some part of it should be sold, he shall thereupon make an order directing the next of kin of the ward and all persons interested in the estate to appear before him at a time and place to be therein specified, not less than four nor more than eight weeks from the time of making such order, to show cause why a license should not be granted for the sale of such estate.

Laws Oreg., Dec. 15, 1863; Hill's Ann. Laws, s. 3119; Gager v. Henry, 5 Saw., 235; Walker v. Goldsmith, 14 Oreg., 125.

Sec. 925. **Service of order.** A copy of such order shall be personally served on the next of kin of such ward, and on all persons interested in the estate, at least ten days before the hearing of the petition, or shall be published at least three successive weeks in a newspaper circulating in the district, to be specified by the commissioner.

Laws Oreg., Dec. 15, 1863; Hill's Ann. Laws, s. 3120.

Sec. 926. **When certificate of commissioner is necessary.** No such license shall be granted for the sale of any real estate of a ward, excepting that of a minor, unless the commissioner of the precinct of which the ward is an inhabitant shall certify in writing his approbation of the proposed sale.

Laws Oreg., Dec. 15, 1863; Hill's Ann. Laws, s. 3121.

Sec. 927. **Bond of guardian.** Every guardian licensed to sell real estate as aforesaid shall, before the sale, give bond to the United States, with sufficient surety or sureties, with condition to sell the same in the manner prescribed for sales of real estate by executors or administrators, and to account for and dispose of the proceeds of the sale in the manner provided by law.

Laws Oreg., Dec. 15, 1863; Hill's Ann. Laws, s. 3122; Goldsmith v. Gilliland, 10 Saw., 606.

Sec. 928. **His oath.** Such guardian shall also, before fixing on the time and place of sale, take and subscribe an oath before the commissioner or some

other officer competent to administer the same, in substance as follows: That in disposing of the estate which he is licensed to sell, he will use his best judgment in fixing the time and place of sale, and that he will exert his utmost endeavors to dispose of the same in such manner as will be most for the advantage of all persons interested therein.

Laws Oreg., Dec. 15, 1863; Hill's Ann. Laws, s. 3123.

Sec. 929. **Notice of sale.** He shall also give public notice of the time and place of sale and shall proceed therein in like manner as is prescribed for executors and administrators; and the evidence of giving such notice may be perpetuated in the same manner and with the same effect as is provided in the case of sales of real estate by executors and administrators.

Laws Oreg., Dec. 15, 1863; Hill's Ann. Laws, s. 3124; 14 Oreg., 144.

Sec. 930. **License, how long in force.** No license granted in pursuance of this chapter shall be in force for more than one year after the time of granting the same.

Laws Oreg., Dec. 15, 1863; Hill's Ann. Laws, s. 3125.

Sec. 931. **When foreign guardian may file copy of his appointment.** When any minor, insane person, or spendthrift residing out of the district shall be put under guardianship in the State or county in which he resides, and shall have no guardian appointed in the district, the foreign guardian may file an authenticated copy of his appointment with the commissioner of any precinct in which there may be real estate of the ward; after which he may be licensed by the commissioner to sell the real estate of the ward in any precinct in the same manner and upon the same terms and conditions as are prescribed in this chapter in the case of a guardian appointed in the district, except in the particulars hereinafter mentioned.

Laws Oreg., Dec. 15, 1863; Hill's Ann. Laws, s. 3126.

Sec. 932. **When foreign guardian may be licensed to sell.** Every foreign guardian so licensed to sell real estate shall take and subscribe the oath in the like case of guardians appointed in the district, and shall give notice of the time and place of sale, and conduct the same in the same manner prescribed for guardians appointed in the district, and may perpetuate the evidence of the notice in the same manner.

Laws Oreg., Dec. 15, 1863; Hill's Ann. Laws, s. 3127.

Sec. 933. **Where proceedings may be instituted.** All the proceedings required to be had before the commissioner in any precinct in the district respecting such sale by a foreign guardian shall be had before the commissioner for the precinct in which the authenticated copy of his appointment is filed.

Laws Oreg., Dec. 15, 1863; Hill's Ann. Laws, s. 3128.

Sec. 934. **Disposition of residue of proceeds; conversion.** Upon every such sale by a foreign guardian the proceeds of sale, or as much thereof as may remain upon the final settlement of the accounts of guardianship, shall be considered as real estate of the ward and shall be disposed of among the same persons and in the same proportions as the real estate would have been according to the laws of the district if it had not been sold; and the foreign guardian shall, in every case, before making the sale, give bond to the United States, with sufficient surety or sureties, with condition to account for and dispose of the same according to law.

Laws Oreg., Dec. 15, 1863; Hill's Ann. Laws, s. 3129.

Sec. 935. **Costs, when to prevailing party.** If any person shall appear and object to the granting of any license prayed for under the provisions of this

chapter, and it shall appear to the commissioner that either the petition or the objection is unreasonable, the commissioner shall give judgment for costs against the losing party in the cause.

Laws Oreg., Dec. 15, 1863; Hill's Ann. Laws, s. 3130.

Sec. 936. **Limitation of suits to recover estate sold by guardian.** No action for the recovery of any estate sold by a guardian under the provisions of this chapter shall be maintained by the ward, or by any person claiming under him, unless it be commenced within five years next after the termination of the guardianship, excepting only that persons out of the district and minors and others under legal disability to sue at the time when the cause of action shall accrue may commence their action at any time within five years next after the removal of the disability or after their return to the district.

Laws Oreg., Dec. 15, 1863; Hill's Ann. Laws, s. 3131.

Sec. 937. **Certain irregularities not to avoid sale.** In case of an action relating to any estate sold by a guardian under the provisions of this chapter, in which the ward, or any person claiming under him, shall contest the validity of the sale, the same shall not be avoided on account of any irregularity in the proceedings: Provided, It shall appear—

First. That the guardian was licensed to make the sale by a commissioner of competent jurisdiction;

Second. That he gave a bond that was approved by the commissioner;

Third. That he took the oath prescribed in this chapter;

Fourth. That he gave notice of the time and place of sale as prescribed by law; and,

Fifth. That the premises were sold accordingly at public auction, and are held by one who purchased them in good faith.

Laws Oreg., Dec. 15, 1863; Hill's Ann. Laws, s. 3132; Walker v. Goldsmith, 14 Saw., 135; 14 Oreg., 132.

Sec. 938. **Liability of guardian for misconduct.** If, in relation to such sale, there should be any neglect or misconduct in the proceedings of the guardian, by which any person interested in the estate shall suffer damage, such aggrieved party may recover such damage in an action on the bond of such guardian or otherwise as the case may require.

Laws Oreg., Dec. 15, 1863; Hill's Ann. Laws, s. 3133.

Sec. 939. **Sale, when not held void, although irregular.** If the validity of any sale made by a guardian under this chapter shall be drawn in question by any person claiming adversely to the title of the ward, or claiming under any title that is not derived from or through the ward, the sale shall not be held void on account of any irregularity in the proceedings: Provided, The guardian was authorized to make the sale by the proper commissioner, and that he did accordingly execute and acknowledge, in legal form, a deed for the conveyance of the premises.

Laws Oreg., Dec. 15, 1863; Hill's Ann. Laws, s. 3134.

CHAPTER NINETY.

OF APPEALS IN PROBATE CASES.

Sec.
940. Appeals to district court.
941. Exceptions and orders of commissioner.
942. Duty of district judge.
943. Proceedings in such cases.

Sec. 940. Appeals to district court. There shall be an appeal to the district court of the district of Alaska from all orders of the commissioners exercising the jurisdiction of a court of probate.

Sec. 941. Exceptions and orders of commissioner. In the case of decedents any heir, legatee, devisee, creditor, or other person interested in the estate, and in the case of minors, lunatics, and habitual drunkards, any creditor or relative within the third degree of consanguinity, may file with the commissioner exceptions to any order of such commissioner granting or revoking letters of administration or of guardianship; allowing semiannual or final accounts; allowing or rejecting claims; directing the payment of debts or legacies, or the distribution of estates; ordering the sale or disposal of real or personal property, or other proceeding. Upon the filing of such exception the commissioner shall make a transcript of all files, papers, and evidence pertaining to such order or proceeding and forward the same to the clerk of the district court.

Sec. 942. Duty of district judge. Upon the filing of such exceptions the district judge shall proceed on due notice to hear and determine the same at such time and in such manner as he shall prescribe by order, and for that purpose may receive and entertain affidavits and depositions or hear oral evidence.

Sec. 943. Proceedings in such cases. Upon such hearing the district court or judge thereof shall determine the issues so raised according to the very right of the matter and make such order in the premises as he may see fit, which order shall be entered in a docket to be kept by the clerk of the court for that purpose, properly indexed, and a copy of the same shall be forwarded to the commissioner before whom the exceptions were filed, who shall thereupon proceed in accordance with such order. Such orders shall be deemed a judgment subject to appeal in the manner provided for appeals from judgments in the district court.

CHAPTER NINETY-ONE.

OF THE RECORDS AND FILES OF JUSTICE'S COURT.

Sec.
944. Records and files of a justice's court, what constitutes.
945. Docket of justice, what entries to be made therein.
946. Docket and files, public writings.

Sec. 944. Records and files of justice's court, what constitute. The records and files of a justice's court are the docket and all papers and process filed in or returned to such court concerning or belonging to any proceeding authorized to be had or taken therein or before the justice of the peace who holds such court.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2054.

Sec. 945. Docket of justice, what entries to be made therein. The docket of a justice of the peace is a book in which he must enter—

First. The title of every action or proceeding commenced in his court or before him, with the names of the parties thereto and the time of the commencement thereof;

Second. The date of making or filing any pleading, and, when the same is made orally, a plain statement of the substance thereof and the verification thereto when one is required;

Third. An order allowing a provisional remedy, and the date of issuing and returning the summons or other process;

Fourth. The time when the parties, or either of them, appear, or their failure to do so;

Fifth. Every postponement of a trial or proceeding, and upon whose application, and to what time;

Sixth. The demand for a jury, if any, and by whom made; the order for a jury, and the time appointed for trial thereby;

Seventh. The return of an order for a jury, the names of the persons impaneled and sworn as a jury, and the names of all witnesses sworn, and at whose request;

Eighth. The verdict of the jury, and when given; and if the jury disagree and are discharged without giving a verdict, a statement of such disagreement and discharge;

Ninth. The judgment of the court, and when given;

Tenth. The fact of an appeal having been made and allowed, and the date thereof, with a memorandum of the undertaking thereof, and the justification of the sureties therein;

Eleventh. Satisfaction of the judgment or any part thereof;

Twelfth. A memorandum of all orders relating to the admission of bail, taking bail, or commitment for want thereof;

Thirteenth. All other matters which may be material or specially required by any statute.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2055.

Sec. 946. **Docket and files; public writings.** The docket and files of a justice's court are to be safely and securely kept by the justice of the peace, and by him delivered to his successor in office when demanded. Such docket and files are public writings.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2056.

CHAPTER NINETY-TWO.

OF GENERAL PROVISIONS IN RELATION TO CIVIL ACTIONS IN JUSTICE'S COURT.

Sec.
947. Code of Civil Procedure to govern.
948. Summons, by whom issued, and requirements of.
949. Same subject.
950. Service of summons.
951. When served and by whom.
952. Undertaking for costs, when may be required.
953. Sureties in such cases.
954. Provisional remedies.
955. Who may serve writ of arrest, attachment, and order for the delivery of personal property.
956. Disposition of defendant arrested in civil action.
957. Defendant entitled to give bail.
958. Undertaking of bail.
959. Undertaking for delivery of personal property.
960. Real property can not be attached by process from a justice's court.
961. Justification of sureties.

Sec. 947. **Mode of governing civil actions.** A civil action in a justice's court is commenced and prosecuted to final determination, and judgment enforced therein in the manner provided in this code for similar actions in courts of record, except as otherwise provided: Provided, Necessary disbursements shall in all cases be allowed the prevailing party.

Laws Oreg., Oct. 20, 1874; Hill's Ann. Laws, s. 2057; 15 Oreg., 203.

Sec. 948. Summons, by whom issued and requirements of. The summons shall be issued and signed by the justice, and must require the defendant to appear before such justice at a time and place to be named therein not less than six nor more than twenty days from the date thereof, to answer the complaint of the plaintiff, or judgment for want thereof will be taken against him.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2058.

Sec. 949. Same subject. The summons shall be issued and signed by the justice, and may be in the following form:

To the United States marshal of the district of Alaska or any deputy: In the name of the United States of America we command you to summon ——— to appear before the undersigned, a justice of the peace in ——— precinct in said district, on the ——— day of ———, 19——, at the hour of ——— o'clock, in the ——— of said day, at ——— in the said precinct, to answer the complaint of ——— founded upon an instrument of writing (or note or account, or for trespass or injury to property, or any similar statement, as the case may be), and wherein he demands ——— dollars. Given under my hand this ——— day of ———, 19——.

A. B.,
Commissioner and ex officio Justice of the Peace.

Laws Oreg., Feb. 26, 1885; Hill's Ann. Laws, s. 2059.

Sec. 950. Service of summons. The service of the summons may be made as follows: First, by delivering a copy thereof to the defendant; or, second, by leaving a copy of the summons at the usual place of abode of the defendant, with some person of the family above the age of fifteen years; and if a defendant shall refuse to hear the summons read, or to receive a copy thereof, at the offer of the officer to read the same or to deliver a copy thereof, such refusal shall be a sufficient service of the summons; or if the defendant be a corporation, then to the president, secretary, or a managing or local agent thereof.

Laws Oreg., Feb. 26, 1885; Hill's Ann. Laws, s. 2060.

Sec. 951. When served. The summons must be served at least five days before the time therein required for the defendant to appear.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2061; 5 Oreg., 480; 11 id., 274.

Sec. 952. Undertaking for costs. If the plaintiff is a nonresident of the precinct, the justice may require him to give an undertaking, with one or more sureties, for the costs and disbursements of the action before issuing the summons, and if at any time before the commencement of the trial the defendant apply therefor the justice must require such plaintiff to give such undertaking; but if the plaintiff is a resident of the precinct the justice may, in his discretion, upon a like application on the part of the defendant, require such plaintiff to give such undertaking.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2062; 5 Oreg., 186.

Sec. 953. Form of undertaking and qualifications of sureties. The undertaking may be in substantially the following form: "I, A B," or "we, A B and C D, undertake to pay E F, the defendant in this action, all costs and disbursements that may be adjudged to him in this action." The sureties must possess the qualifications of bail upon arrest, and if required by the defendant must justify in a sum not less than fifty dollars. A deposit of fifty dollars with the justice, or such less sum as he may deem sufficient, is equivalent to giving the required undertaking; and if the undertaking or deposit in lieu thereof is not given or made upon the day the same is demanded the justice must dismiss the action as for want of prosecution.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2063.

Sec. 954. **Provisional remedies.** In a civil action in a justice's court a plaintiff is entitled to the benefit of the provisional remedies of arrest, attachment, and delivery of personal property claimed in the action, as in like cases in a court of record. All affidavits, orders, and undertakings for such remedies are to be taken or made and filed with the justice, and such process is to be issued by and made returnable before him.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2064; 5 Oreg., 480; 12 id., 146.

Sec. 955. **Who may serve process.** A writ of arrest, of attachment, and order for the delivery of personal property claimed in the action, may be served and executed by any person authorized to serve a summons.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2065.

Sec. 956. **Arrests in civil actions.** A defendant who has been arrested in a civil action must, if he require it, be at once taken before the justice who issued the writ, for the purpose of giving bail. If he do not so require, the officer making the arrest shall keep him in his custody, and take him before such justice on the day and at the hour the defendant is required to appear and answer.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2066.

Sec. 957. **Defendant entitled to give bail.** Upon the defendant being brought before the justice, either on the day on which he is required to appear and answer or before, he must be allowed to give bail if he desire to.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2067.

Sec. 958. **Undertaking of bail.** The undertaking of bail may be given with one or more sufficient sureties, and must be taken by the justice. The plaintiff may then and there except to the sufficiency of the bail, and unless he do so, he shall be deemed to have accepted it.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2068.

Sec. 959. **Undertaking for delivery of personal property.** The undertaking for an order for the delivery of personal property claimed in the action shall be taken by the justice who makes the order, and he shall require the sureties therein to justify as bail upon arrest; and no exceptions to the sufficiency of such sureties shall thereafter be allowed.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2069; 12 Oreg., 146.

Sec. 960. **Real property can not be attached.** Real property or any interest therein can not be attached upon a writ of attachment in a civil action in a justice's court.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2070.

Sec. 961. **Justification of sureties.** Whenever sureties in an undertaking given in a provisional remedy by either party are required to justify, the justification shall be made before the justice in whose court the action is pending, and upon the notice prescribed in such cases by this code, or upon a shorter notice, to be prescribed by order of the justice.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2071.

CHAPTER NINETY-THREE.

OF THE PLEADINGS IN JUSTICE'S COURT.

Sec.
962. No formal pleadings necessary.
963. Same subject.
964. Action on lost instrument.

Sec. 962. No formal pleadings necessary. No formal pleadings on the part of either plaintiff or defendant shall be required in a justice's court; but before any process shall be issued in any suit, the plaintiff shall file with the justice the instrument sued on, and a statement of the account as of the facts constituting the cause of action upon which the action is founded; and the defendant shall, before the trial is commenced, file the instrument, account, or statement of his set-off or counter-claim relied upon.

Laws Oreg., Feb. 26, 1885; Hill's Ann. Laws, s. 2072.

Sec. 963. Same subject. When the action is founded on any instrument of writing purporting to have been executed by the defendant, and the debt or damage claimed may be ascertained by such instrument, the same shall be filed with the justice, and no other statement or pleading shall be required. If the action be upon an account, a bill of the items constituting the account shall be filed. In all other cases a statement of the facts constituting the cause of action, and the amount or sum demanded, shall be filed with the justice; but no action shall be dismissed or discontinued for want of any such statement as cause of action, or for any defect or insufficiency thereof, if the plaintiff shall file the instrument or account as a sufficient statement before the jury is sworn or the trial commenced, or when required by the justice.

Laws Oreg., Feb. 26, 1885; Hill's Ann. Laws, s. 2073.

Sec. 964. What necessary in case of lost instruments. If such instrument be alleged to be lost or destroyed, it shall be sufficient for the plaintiff to file with the justice the affidavit of himself, or some other credible person, stating such loss or destruction, and setting forth the substance of such instrument.

Laws Oreg., Feb. 26, 1885; Hill's Ann. Laws, s. 2074.

CHAPTER NINETY-FOUR.

OF THE POSTPONEMENT OF TRIALS IN JUSTICE'S COURT.

Sec.
965. When postponement allowed.
966. When it discharges defendant from arrest.
967. When deposition to be taken.
968. Change of place of trial.
969. Costs of the same.
970. Change, when deemed completed.
971. Proceeding when title to land is in issue.

Sec. 965. When postponement allowed. When a cause is at issue upon a question of fact, the justice must, upon sufficient cause shown, on the application of either party, postpone the trial for a period not exceeding sixty days.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2075.

Sec. 966. When it discharges defendant from arrest. When the defendant

is in custody, a postponement of the trial granted upon the application of the plaintiff for a longer period than one day discharges the defendant from such arrest; and in such case the justice must endorse upon the writ of arrest, "The defendant is discharged from custody upon the within process," and sign the same with his name and office.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2076.

Sec. 967. **When deposition to be taken.** An application for the postponement of a trial must be granted unless the party applying therefor, if required by the adverse party, consent to take the deposition of any witness of such adverse party then in attendance upon the court. If the consent is given, the justice must take such deposition, and the same may be read on the trial, subject to the same objections as if the witness were present and gave the testimony orally.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2077.

Sec. 968. **Change of place of trial.** The justice may change the place of trial, on notice of either party to the action, when it appears from the affidavit of such party either—

First. That the justice is a party to, or directly interested in, the event of the action, or connected by consanguinity or affinity, within the third degree, with the adverse party or those for whom he prosecutes or defends;

Second. That the justice is so prejudiced against the party making the motion that he can not expect an impartial trial before the justice;

Third. That the convenience of parties and witnesses would be promoted by such change, and that the motion is not made for the purpose of delay. The motion for change of the place of trial can not be made or allowed in any action until after the cause is at issue on a question of fact only; if the motion is allowed, the change shall be made to the nearest justice; neither party shall be entitled to more than one change of the place of trial, except for causes not in existence when the first change was allowed. When the place of a trial has been changed, the justice shall forthwith transmit to the nearest justice a transcript of the proceedings had in such cause, with all the original papers filed therein.

Laws Oreg., Dec. 19, 1865; Hill's Ann. Laws, s. 2078.

Sec. 969. **Cost of change.** The costs of such change of venue shall be paid by the party applying therefor, and not taxed as a part of the costs in the case: Provided, It shall not be necessary to issue new subpœnas to witnesses; but the witnesses shall appear before the justice before whom the cause has been transferred without the issue of any other notice than the allowance of the motion to change the venue.

Laws Oreg., Dec. 19, 1865; Hill's Ann. Laws, s. 2079.

Sec. 970. **Change when deemed complete.** Upon the filing of the transcript and papers with the justice to whom the cause has been transferred, the change of venue shall be deemed complete, and thereafter the action shall proceed as though it had been commenced before such justice.

Laws Oreg., Dec. 19, 1865; Hill's Ann. Laws, s. 2080.

Sec. 971. **Proceeding, when title to land is in issue.** If it appear on the trial of any cause before a justice of the peace, from the evidence of either party, that the title to lands is in question, which title shall be disputed by the other party, the justice shall immediately make an entry thereof in his docket and cease all further proceedings in the cause, and shall certify and return to the district court a transcript of all the entries made in his docket

relating to the case, together with all the process and other papers relating to the action, in the same manner and within the same time as upon an appeal; and thereupon the district court shall proceed in the cause to final judgment and execution in the same manner as if the said action had been originally commenced therein; and the costs shall abide with the event of the suit.

Laws Oreg., Feb. 25, 1885; Hill's Ann. Laws, s. 2081.

CHAPTER NINETY-FIVE.

OF TRIAL BY JURY IN JUSTICE'S COURT.

Sec.
972. Demand for jury, how and when made.
973. Trial by court, how judgment may be given.
974. Order to summon jury.
975. When to require jurors to appear.
976. Officer to summon persons qualified to serve.
977. Order for jury, how served.
978. Deficiency, how supplied.
979. Number of peremptory challenges.
980. Qualifications of jurors in justice's court.

Sec. 972. **Demand for jury, how and when made.** When a cause is at issue upon a question of fact, if either party then demand a jury trial, and deposit with the justice the trial fee, such issue must be tried by a jury and not the court; but otherwise it must be tried by the court.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2082.

Sec. 973. **Trial by court, how judgment may be given.** When an issue of fact is tried by the justice it is not necessary that there should be any special statement of the facts found or law determined on such trial, but it is sufficient for the court to give judgment generally, as the law and the evidence may require, for the plaintiff or the defendant, setting forth therein for what amount, or what relief, or to what effect the same is given.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2083.

Sec. 974. **Order to summon jury.** When a jury has been demanded by a party to an action in a justice's court, the justice must make an order in writing, directed to the marshal or any deputy, or to any person authorized to act as a constable therein, commanding him to summon six persons to serve as jurors in the action between the parties, naming them, at a time and place to be named therein.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2084.

Sec. 975. **When jurors to appear.** The order shall require the jurors to appear before the justice forthwith, or at some time after it, to which the trial of the issue may be postponed.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2085.

Sec. 976. **Officer to summon persons qualified to serve.** The officers serving the order for a jury must do so impartially, by selecting only such persons as he knows, or has good reason to believe, are qualified according to law to serve as jurors in the court to which they are summoned, and in the particular action for which they are selected.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2086.

Sec. 977. **Order for jury, how served.** The officer must serve the order

by giving notice to each of the persons selected of the time and place he is required to appear, and for what purpose, and return the same according to the direction therein, with the names of the persons summoned, verified by his own certificate.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2087.

Sec. 978. **Deficiency in jurors, how supplied.** If a sufficient number of jurors do not appear at the time and place required, or if any of those appearing are peremptorily challenged, or upon a challenge for cause found disqualified, the justice must order the proper officer to summon a sufficient number of other qualified persons, until the jury is completed.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2088.

Sec. 979. **Peremptory challenges.** Each party is entitled to two peremptory challenges and no more.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2089.

Sec. 980. **Qualifications of jurors.** A person competent to act as a juror in a justice's court must possess the qualifications prescribed by this code for jurors in the district court, and must also be an inhabitant of the precinct in which the court is holden at the time he is summoned.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2090.

CHAPTER NINETY-SIX.

OF JUDGMENT AND EXECUTION IN JUSTICE'S COURT.

Sec.
981. Docketing judgment in district court.
982. Effect of same.
983. Setting of mutual judgment.
984. Conditions of judgment proposed as set-off.
985. When transcript stays execution.
986. If judgments mutual, justice must set off.
987. Judgment for difference.
988. Judgment does not affect title to real property.
989. Execution to enforce judgment when against real property.
990. Execution, when returnable, and by whom served.
991. Filing transcript in another precinct.
992. Transcript of judgment, how enforced.
993. Execution, renewal of.
994. Justice may enforce judgment given by his predecessor.

Sec. 981. **Docketing judgment in district court.** Whenever a judgment is given in a justice's court in favor of anyone, for the sum of ten dollars or more, exclusive of costs or disbursements, the party in whose favor such judgment is given may, within one year thereafter, file a certified transcript thereof with the clerk of the district court, and thereupon such clerk shall immediately docket the same in the judgment docket of the district court.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2103; 12 Oreg., 348.

Sec. 982. **Effect of docketing judgment in district court.** From the time of docketing a judgment of a district court, as provided in the last section, the same shall be a lien upon the real property of the defendant, as if it were a judgment of the district court wherein it is docketed.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2104; 4 Oreg., 58.

Sec. 983. **Application of set-off to mutual judgments.** A party against whom a judgment is given in a justice's court may, upon three days' notice to

the adverse party, apply to the justice of such court to have another judgment given in a justice's court, between the same parties and against such adverse party, set off against such first-mentioned judgment.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2105.

Sec. 984. **Condition of judgment proposed as a set-off.** There must be no existing right of appeal from the judgment proposed as a set-off; and if such judgment was given in another court than the one where the application is made, the party proposing such set-off must produce a transcript of such judgment, certified by the proper justice, which certificate shall also state how much of the judgment remains unsatisfied, and that the transcript is given for the purpose of being set off against the judgment to which it is proposed as a set-off.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2106.

Sec. 985. **When transcript stays execution.** The justice making such transcript and certificate shall make an entry thereof in his docket, and thereafter all proceedings to enforce such judgment shall be stayed, unless the transcript be returned with the certificate of the proper justice endorsed thereon, to the effect that it has not been allowed to be set off.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2107.

Sec. 986. **Justice shall allow set-off.** If, upon the hearing of the application, the justice finds that the judgments are mutual, he shall give judgment allowing the proposed set-off.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2108; 15 Oreg., 274.

Sec. 987. **Judgment for difference.** If there is any difference in the amount of the two judgments, judgment for the difference must be given in favor of the party owning the largest judgment. If the justice refuse to allow the set-off, he shall so certify on the transcript and return it to the party making the application.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2109.

Sec. 988. **Judgment does not affect title to real property.** Although the title to real property may be controverted or questioned in an action in a justice's court, the judgment in such action in no way affects or determines such title as between the parties thereto or otherwise.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2110.

Sec. 989. **Execution to enforce judgment against real property.** Execution to enforce a judgment in a justice's court must not be issued against or levied upon the real property of the defendant; but when a judgment given by a justice has been duly docketed in the district court, thereafter it must be enforced as a judgment of such district court.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2111.

Sec. 990. **Execution, when returnable and by whom served.** An execution issued by a justice must be made returnable in thirty days from the date thereof, and may be directed to the marshal or any deputy or other officer authorized to act as constable in such precinct, and must be executed by any of such officers when delivered to him.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2112.

Sec. 991. **When transcript filed in another precinct.** When an execution is returned unsatisfied in whole or in part for want of goods and chattels of the defendant whereon to levy, the party entitled to the benefit of the

judgment may have a certified transcript thereof and file the same with any justice in any other precinct.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2113.

Sec. 992. **Transcript of judgment, how enforced.** Upon the filing of a transcript, the justice must make an entry thereof in his docket, and thereafter execution may issue to enforce such judgment, or any part thereof remaining unsatisfied, as if it had been given by such justice with whom the transcript is filed.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2114.

Sec. 993. **Execution, renewal of.** At any time before the expiration of the return day of the execution it may be renewed for another period of thirty days, at the request of the plaintiff, by an endorsement to that effect, made by the justice thereon. Such endorsement must be dated, and if any part of such execution has been satisfied must state the amount then due thereon. An entry of such renewal must also be made in the docket of the justice.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2115.

Sec. 994. **Justice may enforce judgment given by his predecessor.** A justice of the peace has authority and power to enforce a judgment given by his predecessor in office, or by a justice whose docket has been transferred to him, and to complete any unfinished business begun before such predecessor, or entered in such docket, as if the same had been given or begun before himself.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2116.

CHAPTER NINETY-SEVEN.

OF APPEALS FROM JUSTICES' COURTS IN CIVIL ACTIONS.

Sec.
995. Appeal, who may take, and from what judgment.
996. To what court and within what time.
997. How taken.
998. Undertaking, when to stay proceedings.
999. When proceedings stayed by undertaking for cost.
1000. Allowance of appeal and return of execution.
1001. Qualification and justification of sureties.
1002. Transcript, when filed and what constitute.
1003. Appeal, how perfected and tried.
1004. Dismissal of appeal.
1005. Judgment in the appellate court.
1006. Defective undertaking, how cured.
1007. Amendment of pleadings in the appellate court.

Sec. 995. **Who may appeal and from what judgment.** Either party may appeal from a judgment given in a justice's court, in a civil action, when the sum in controversy is not less than fifty dollars, or for the recovery of personal property of the value of not less than fifty dollars, exclusive of costs in either case, except when the sum is given by confession or for want of an answer, as prescribed in this chapter, and not otherwise.

Laws Oreg., Oct. 27, 1868; Hill's Ann. Laws, s. 2117; 5 Oreg., 440; 14 id., 207; id., 480; 15 id., 597.

Sec. 996. **To what court and within what time.** The appeal is taken to the district court, and may be taken within thirty days from the date of the entry of the judgment. The party appealing is known as the appellant and

the adverse party the respondent, but the title of the action is not thereby changed.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2118.

Sec. 997. **How taken.** An appeal is taken by serving a notice thereof on the adverse party or his attorney, and filing the original, with the proof of service indorsed thereon, with the justice, and by giving the undertaking for the costs of the appeal, as hereinafter provided.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2119; 1 Oreg., 312; 3 id., 320; 7 id., 138; 13 id., 246; id., 467; 14 id., 264; id., 317; id., 470; 16 id., 266; 19 id., 289; 26 id., 445.

Sec. 998. **When undertaking stays proceedings.** The undertaking of the appellant must be given, with one or more sureties, to the effect that the appellant will pay all costs and disbursements that may be awarded against him on the appeal; but such undertaking does not stay the proceedings unless the undertaking further provides to the effect following, that the appellant will satisfy any judgment that may be given against him in the appellate court on the appeal.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2120; 13 Oreg., 494.

Sec. 999. **When proceeding stayed by undertaking for costs.** If the judgment appealed from be in favor of the appellant, the proceedings thereon are stayed by the notice of appeal and the undertaking for the costs of the appeal.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2121.

Sec. 1000. **Allowance of appeal and return of execution.** When an appeal is taken the justice must allow the same and make an entry thereof in his docket, stating whether the proceedings are thereby stayed or not When the proceedings are stayed, if an execution has been issued to enforce the judgment, the justice must recall the same by written notice to the officer holding the execution, and thereupon it must be returned and all property taken thereon and not sold released; and if the body of the defendant has been taken on execution he must be discharged from custody.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2122; 7 Oreg., 139.

Sec. 1001. **Qualification and justification of sureties.** All sureties in an undertaking under the provisions of this chapter must have the qualifications of bail upon arrest, and if required by the adverse party must justify before the justice in like manner.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2123; 14 Oreg., 317; 19 id., 290.

Sec. 1002. **Transcript on appeal.** Within twenty days after the allowance of the appeal the appellant must file with the clerk of the district court a transcript of the cause. The transcript must contain a copy of all the material entries in the justice's docket relating to the cause or the appeal, and must have annexed thereto all the original papers relating to the cause or the appeal and filed with the justice.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2125; 19 Oreg., 539.

Sec. 1003. **Appeal, when perfected and how tried.** Upon the filing of the transcript with the clerk of the district court the appeal is perfected, and the action shall be deemed pending and for trial therein as if originally commenced in such court, and the district court shall proceed to hear, try, and determine the same anew, without regarding any error or other imperfection in the original summons and the service thereof, or on the trial, judgment, or other proceeding of the justice or marshal in relation to the cause.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, ss. 2126, 2127.

Sec. 1004. **Dismissal of appeal.** The district court, on motion of the respondent, may, at any time before the action is called for trial, dismiss the appeal, if it satisfactorily appear that the transcript and original papers annexed are incomplete in any material particular, unless upon the cross motion of the appellant it makes a rule upon the justice to supply such omission, upon such terms against the appellant as may be just. At any time before the trial the court may dismiss the appeal upon the motion of the appellant.

Laws Oreg., Oct. 21, 1864.

Sec. 1005. **Judgment in the appellate court.** When an appeal is dismissed, the district court must give judgment as it was given in the court below, and against the appellant, for the costs and disbursements of the appeal. When judgment is given in the appellate court against the appellant, either with or without trial of the action, it must also be given against the sureties in his undertaking according to the nature and effect of it. If the appellant fail to file such transcript within the time required, the adverse party may file a transcript of the judgment of the justice, and the notice and undertaking on appeal, which, on demand, the justice shall deliver to him for that purpose, and thereupon have such appeal dismissed and judgment against the appellant and his sureties as provided in this section.

Hill's Ann. Laws, s. 2123; 15 Oreg., 603.

Sec. 1006. **Defective undertaking.** An appeal can not be dismissed on the motion of the respondent, on account of the undertaking therefor being defective, if the appellant, before the determination of the motion to dismiss, will execute a sufficient undertaking, and file the same in the appellate court, upon such terms as may be deemed just.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2129; 11 Oreg., 134.

Sec. 1007. **Amendment of pleadings in appellate court.** In all cases of appeal, the bill of items of the account sued on, or filed as a counterclaim or set-off, or the abatement of the plaintiff's cause of action, or of the defendant's counterclaim or set-off, or other ground of defense filed before the justice may be amended upon appeal in the appellate court to supply any defect, deficiency, or omission therein, by filing formal pleadings therein, when by such amendment substantial justice will be promoted; and in all cases when required by the court or by either party to the action, formal pleadings shall be filed on either side upon the trial of the cause on appeal; when either party requires such formal pleadings, he shall cause to be served on the opposite party a notice thereof in writing, and file the same in the court where the cause is pending by the first day of the term of such court at which such cause is to be tried; but no new item or cause of action not embraced or intended to be included in the original account or statement shall be added by such amendment.

Laws Oreg., Feb. 26, 1885; Hill's Ann. Laws, s. 2130; 12 Oreg., 321; 18 id., 258; 23 id., 68.

CHAPTER NINETY-EIGHT.

OF MISCELLANEOUS PROVISIONS RELATING TO JUSTICES' COURTS.

Sec.
1008. Judgment of justices may be reviewed.
1009. Appeals, where jury is demanded.
1010. Who may act as attorney.
1011. Special deputies.
1012. Party entitled to one hour.
1013. Proceedings for contempt.
1014. Punishment for contempt.

Sec. 1008. **Judgment of justices may be reviewed.** No provision of this code, in relation to appeals or the right of appeal, must be construed so as to prevent either party to a judgment given in a justice's court from having the same reviewed in the district court for errors in law appearing upon the face of such judgment or the proceedings connected therewith, as provided in chapter fifty-five.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2169; 5 Oreg., 442; 14 Oreg., 210.

Sec. 1009. **Appeals, where jury is demanded.** No appeal can be taken, by the party who demanded a jury, from a judgment in a justice's court given upon the verdict of such jury, unless the judgment be for an amount of money not less than fifty dollars or for the recovery of personal property of the value of not less than fifty dollars, exclusive of costs and disbursements in either case.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2170; 15 Oreg., 509.

Sec. 1010. **Who may act as attorney.** Any person may act as attorney for another in a justice's court, except a person or officer serving any process in the action or proceeding other than a subpœna.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2173.

Sec. 1011. **Special deputies.** Whenever it appears to the justice that any process or order authorized to be issued or made by this code will not be served for want of an officer, such justice may appoint any suitable person, not being a party to the action, to serve the same; such an appointment may be made by an endorsement on the process or order, in substantially the following form, and signed by the justice with his name of office: "I hereby appoint A B to serve the within process, or order," as the case may be.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2173; 13 Oreg., 300.

Sec. 1012. **Party entitled to one hour.** A party is entitled to one hour in which to make his appearance after the time specified in the summons, and not otherwise; and if the justice be then actually engaged in other official business he may, on his own motion, postpone further proceedings in the case until such official business has been completed or he can be disengaged therefrom.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2174; 8 Oreg., 354.

Sec. 1013. **Proceedings for contempt.** Chapter fifty-eight of this title, defining contempts, and the proceeding for punishing a party guilty of contempt, shall apply to justices' courts, except as in this chapter otherwise specially provided.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2184.

Sec. 1014. **Punishment for contempt.** The punishment for contempt in a justice's court shall be by fine or imprisonment, or both; but the fine shall in no case exceed twenty-five dollars, nor the imprisonment ten days.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 2185.

CHAPTER NINETY-NINE.

OF FORCIBLE ENTRY AND DETAINER.

Sec.
1015. When entry upon real property allowed; not to be made with force.
1016. Action to recover possession of premises forcibly entered or held by force.
1017. Necessary averments and complaint.
1018. Action for, how conducted.
1019. Summons in, how served and returned.
1020. Continuance, for what time granted.
1021. Action for, trial by commissioner.
1022. Verdict of jury and judgment on.
1023. Form of execution.
1024. Appeal, by defendant.
1025. Unlawful holding by force, what deemed to be.
1026. Notice to quit must be in writing; service of.
1027. Notice to quit, how long served before action brought.
1028. Action can not be maintained before expiration of period for which rent paid.
1029. Crops sown, etc., before lease expires, tenant may cultivate and harvest.
1030. Merits of title not to be questioned in action; limitation of action.
1031. Notice to quit in action under code of civil procedure.
1032. Precinct defined.

Sec. 1015. **Entry upon real property.** No person shall enter upon any land, tenement, or other real property but in cases where entry is given by law; and in such cases the entry shall not be made with force, but only in a peaceable manner.

Laws Oreg., Oct. 24, 1866; Hill's Ann. Laws, s. 2509.

Sec. 1016. **Action to recover possession of premises.** When a forcible entry shall be made upon any premises, or when entry shall be made in a peaceable manner and the possession shall be held by force, the person entitled to the premises may maintain an action to recover the possession thereof before the commissioner of the precinct in which such real property is situated.

Laws Oreg., Oct. 24, 1866; Hill's Ann. Laws, s. 3510; Thompson v. Wolf, 6 Oreg., 308; Taylor v. Scott, 10 ibid., 484; Harrington v. Watson, 12 ibid., 143; Fogarty v. Kelly, 24 ibid., 319; Aiken v. Aiken, 12 ibid., 203; Bowers v. Cherokee Bob, 45 ibid., 495; Conroy v. Duane, ibid., 599; 49 ibid., 75.

Sec. 1017. **Necessary averments in complaint.** In such action it shall be sufficient to state in the complaint a description of the premises with convenient certainty, that the defendant is in possession thereof, that he entered upon the same with force, or unlawfully holds the same with force, as the case may be, and that the plaintiff is entitled to the possession thereof.

Laws Oreg., Oct. 24, 1866; Hill's Ann. Laws, s. 3511; Chung Yow v. Hop Chong, 11 Oreg., 220.

Sec. 1018. **Action, how conducted.** Such action, except as hereinafter especially provided, shall be conducted in all respects as other actions before commissioners.

Laws Oreg., Oct. 24, 1866; Hill's Ann. Laws, s. 3512.

Sec. 1019. **Summons in, how served and returned.** The summons shall be served and returned as in other cases; such service shall be not less than two nor more than four days before the day of trial appointed by the commissioner.

Laws Oreg., Oct. 24, 1866; Hill's Ann. Laws, s. 3513; 15 Oreg., 160.

Sec. 1020. **Continuance, for what time granted.** No continuance shall be

granted for a longer period than two days, unless the defendant applying therefor shall give an undertaking to the adverse party, with good and sufficient security to be approved by the commissioner, conditioned for the payment of the rent that may accrue if judgment be rendered against the defendant.

Laws Oreg., Oct. 24, 1866; Hill's Ann. Laws, s. 3514.

Sec. 1021. **Action for, trial by commissioner.** If the action be tried by the commissioner without a jury, and after hearing the evidence he shall conclude that the complaint is not true, he shall enter judgment against the plaintiff for costs; if he find the complaint true, or if judgment be rendered by default, he shall render a general judgment against the defendant and in favor of the plaintiff for restitution of the premises and costs of suit; if he find the complaint true in part, he shall render judgment for the restitution of such part only, and the costs shall be taxed as the commissioner shall deem just and equitable.

Laws Oreg., Oct. 24, 1866; Hill's Ann. Laws, s. 3515.

Sec. 1022. **Verdict of jury and judgment on.** If the action be tried by a jury, and they shall find the complaint true, they shall render a general verdict of guilty against the defendant; if not true, then a general verdict of not guilty; if true in part, then a verdict setting forth the facts they find, and the commissioner shall render judgment according to the verdict.

Laws Oreg., Oct. 24, 1866; Hill's Ann. Laws, s. 3516; Altree v. Moore, 1 Oreg., 350.

Sec. 1023. **Form of execution.** The execution, should judgment of restitution be rendered, may be in the following form:

DISTRICT OF ALASKA.

To the marshal of said district:

Whereas a certain action for the forcible entry and detention (or the forcible detention, as the case may be) of the following described premises, to wit: ———, lately tried before me, wherein ——— was plaintiff and ——— was defendant, judgment was rendered on the ——— day of ———, Anno Domini ———, that the plaintiff, ———, have restitution of said premises; and also that he recover costs in the sum of ———. In the name of the United States you are therefore hereby commanded to cause the defendant to be forthwith removed from said premises, said plaintiff to have restitution of the same; also, that you levy of the goods and chattels of said defendant, and make the costs aforesaid and all accruing costs; and of this writ make legal service and due return.

Witness my hand this ——— day of ———, Anno Domini ———.

———— ————,
Commissioner.

Laws Oreg., Oct. 24, 1866; Hill's Ann. Laws, s. 3517.

Sec. 1024. **Appeal by defendant.** If judgment be rendered against the defendant for the restitution of the real property described in the complaint, or any part thereof, no appeal shall be taken by the defendant from such judgment until he shall, in addition to the undertaking now required by law upon appeal, give an undertaking to the adverse party, with two sureties, who shall justify in like manner as bail upon arrest, for the payment to the plaintiff of twice the rental value of the real property of which restitution shall be adjudged from the rendition of such judgment until final judgment in the action, if such judgment shall be affirmed upon appeal.

Laws Oreg., Oct. 24, 1866; Hill's Ann. Laws, s. 3518; Danvers v. Durkin, 14 Oreg., 37.

Sec. 1025. **Unlawful holding by force.** The following shall be deemed cases of unlawful holding by force within the meaning of this chapter:

First. When the tenant or person in possession of any premises shall fail or refuse to pay any rent due on the lease or agreement under which he holds, or deliver up the possession of the premises for ten days after demand made in writing for such possession;

Second. When, after a notice to quit as provided in this chapter, any person shall continue in the possession of any premises at the expiration of the time limited in the lease or agreement under which such person holds, or contrary to any condition or covenant thereof, or without any written lease or agreement therefor.

Laws Oreg., Oct. 24, 1866; Hill's Ann. Laws, s. 3519; 5 Oreg., 469; Chung Yow v. Hop Chung, 11 ibid., 220; 15 ibid., 160.

Sec. 1026. **Notice to quit must be in writing.** A notice to quit must be in writing, and must be served upon the tenant or person in possession by being delivered to him or left at the premises in case of his absence therefrom.

Laws Oreg., Oct. 24, 1866; Hill's Ann. Laws, s. 3520.

Sec. 1027. **Notice to quit, how long served before action brought.** An action for the recovery of the possession of the premises may be maintained in the cases specified in subdivision second of section one thousand and twenty-five when the notice to quit has been served upon the tenant or person in possession for the period of ten days before the commencement thereof, unless the leasing or occupation is for the purpose of farming or agriculture, in which case such notice must be served for the period of ninety days before commencement of such action.

Laws Oreg., Oct. 24, 1866; Hill's Ann. Laws, s. 3521; 15 Oreg., 310.

Sec. 1028. **Action can not be maintained before expiration of period for which rent paid.** The service of a notice to quit upon a tenant or person in possession does not authorize an action to be maintained against him for the possession of the premises before the expiration of any period for which such tenant or person may have paid the rent of such premises in advance.

Laws Oreg., Oct. 24, 1866; Hill's Ann. Laws, s. 3522.

Sec. 1029. **Crops sown, etc., before lease expires.** When the leasing or occupation is for the purpose of farming or agriculture, the tenant or person in possession shall, after the termination of such lease or occupancy, have free access to the premises to cultivate and harvest or gather any crop or produce of the soil planted or sown by him before the service of notice to quit.

Laws Oreg., Oct. 24, 1866; Hill's Ann. Laws, s. 3523.

Sec. 1030. **Merits of title not to be questioned.** In an action to recover the possession of any land, tenement, or other real property, where the entry is forcible or when the possession thereof is unlawfully held by force, the merits of the title shall not be inquired into, and three years' quiet possession of the premises immediately preceding the commencement of such action by the party in possession or those under whom he holds may be pleaded in bar thereof, unless the estate of such party in the premises is ended.

Laws Oreg., Oct. 24, 1866; Hill's Ann. Laws, s. 3524; Shortess v. Wirt, 1 Oreg., 90; Altree v. Moore, ibid., 350; 6 ibid., 311; 12 ibid., 206.

Sec. 1031. **Notice to quit in action under Code of Civil Procedure.** In any action to recover the possession of real property, as provided in chapter

thirty-two of the Code of Civil Procedure, notice to quit, when necessary, may be given as prescribed in this chapter, and nothing in this chapter shall be construed so as to prevent such action being maintained for the recovery of the possession of real property, although the entry of the defendant be forcible or his holding unlawful and with force.

Laws Oreg., Oct. 24, 1866; Hill's Ann. Laws, s. 3525; 11 Oreg., 221.

Sec. 1032. **"Precinct" defined.** That wherever the word "precinct" occurs in this Act it shall be construed to mean the neighborhood in which the commissioner resides, as designated in the order of his appointment, unless where the court by special order, duly made and entered, definitely prescribes the limits of the precinct.

CHAPTER ONE HUNDRED.

OF WITNESSES, INSPECTION AND PROOF OF RECORDS AND OF PRIVATE SEALS.

Sec.
1033. Competent witnesses.
1034. Incompetent witnesses.
1035. Competency of husband and wife.
1036. Competency of attorney.
1037. Competency of clergyman.
1038. Competency of physician.
1039. Inspection of public records.
1040. Proof of public records.
1041. Private seals abolished.
1042. Title by adverse possession.

Sec. 1033. **Competent witnesses.** Neither parties nor other persons who have an interest in the event of an action or proceeding are excluded as witnesses; nor those who have been convicted of crime; nor persons on account of their opinions on matters of religious belief; although in every case, except the latter, the credibility of the witness may be drawn in question, according to the rules of the common law.

Sec. 1034. **Incompetent witnesses.** The following persons shall not be witnesses: 1. Those of unsound mind at the time of the transaction and of their production for examination. 2. Children under ten years of age, who appear incapable of receiving just impressions of the facts respecting which they are examined, or of relating them truly.

Sec. 1035. **Competency of husband and wife.** A husband shall not be examined for or against his wife, without her consent, nor a wife for or against her husband, without his consent; nor can either, during the marriage or afterwards be, without the consent of the other, examined as to any communications made by one to the other during marriage, but the exception does not apply to a civil action or proceeding by one against the other, nor to a criminal action or proceeding for a crime committed by one against the other.

Sec. 1036. **Competency of attorney.** An attorney shall not, without the consent of his client, be examined as to any communication made by his client to him, or his advice given thereon, in the course of his professional employment.

Sec. 1037. **Competency of clergyman.** A priest or clergyman shall not, without the consent of the person making the confession, be examined as to any confession made to him in his professional capacity, in the course of discipline enjoined by the church to which he belongs.

Sec. 1038. **Competency of physician.** A physician or surgeon shall not, against the objection of his patient, be examined in a civil action or proceeding as to any information acquired in attending the patient which was necessary to enable him to prescribe or act for the patient.

Sec. 1039. **Inspection of public records.** Every person has a right to inspect any public writing or record in said district, and every public officer having the custody thereof is bound to permit such inspection, and to give on demand and on payment of the legal fees therefor, a certified copy of such writing or record, and such copy shall in all cases be evidence of the original.

Sec. 1040. **Proof of public records.** A judicial, legislative, or executive record of said district, or of any State or Territory of the United States, or of any foreign country, or of any political subdivision of either, may be proved by the production of the original, or by a copy thereof, certified by the clerk or other person having the legal custody thereof, with the seal of the court or the official seal of such person affixed thereto, if it or he have a seal, or otherwise authenticated as required by sections nine hundred and five, nine hundred and six, and nine hundred and seven of the Revised Statutes of the United States.

Sec. 1041. **Private seals abolished.** Private seals and scrolls as a substitute therefor are abolished and are not required to any instrument, but the effect thereof, when used, shall remain unchanged.

Sec. 1042. **Title by adverse possession.** The uninterrupted adverse notorious possession of real property under color and claim of title for seven years or more shall be conclusively presumed to give title thereto except as against the United States.

CHAPTER ONE HUNDRED AND ONE.

OF INDISPENSABLE EVIDENCE.

Sec.
1043. Sale or transfer of personal property.
1044. Agreement not in writing, when void.
1045. As to representatives (ions) concerning third persons.
1046. Sale or transfer of real property.
1047. When last section to affect certain cases.
1048. Sale or transfer of boat or vessel.

Sec. 1043. **Sale or transfer of personal property.** Every sale or assignment of personal property, unless accompanied by the immediate delivery and the actual and continued change of possession of the thing sold or assigned, shall be presumed prima facie to be a fraud against the creditors of the vendor or assignor, and subsequent purchasers in good faith and for a valuable consideration, during the time such property remains in the possession of said vendor or assignor.

Sec. 1044. **Agreement not in writing, when void.** In the following cases an agreement is void unless the same or some note or memorandum thereof expressing the consideration be in writing and subscribed by the party to be charged, or by his lawfully authorized agent:

(1) An agreement that by its terms is not to be performed within a year from the making thereof;

(2) An agreement to answer for the debt, default, or miscarriage of another;

(3) An agreement by an executor or administrator to pay the debts of his testator or intestate out of his own estate;

(4) An agreement made upon consideration of marriage, other than a mutual promise to marry;

(5) An agreement for the sale of personal property at a price not less than fifty dollars, unless the buyer accept and receive some part of such personal property, or pay at the time some part of the purchase price; but when the sale is made by auction, an entry by the auctioneer in his sale book, at the time of the sale, of the property sold, the terms of the sale, the price, and the names of the purchaser and person for whose account the sale is made, is a sufficient memorandum;

(6) An agreement for leasing for a longer period than one year, or for the sale of real property, or of any interest therein, or to charge or encumber the same;

(7) An agreement concerning real property made by an agent of the party sought to be charged, unless the authority of the agent be in writing.

Sec. 1045. **As to representations concerning third parties.** No evidence is admissible to charge a person upon a representation as to the credit, skill, or character of a third person unless such representation or some memorandum thereof be in writing, and either subscribed by or in the handwriting of the party to be charged.

Sec. 1046. **Sale or transfer of real property.** No estate or interest in real property, other than a lease for a term not exceeding one year, nor any trust or power concerning such property, can be created, transferred, or declared otherwise than by operation of law, or by a conveyance or other instrument in writing subscribed by the party creating, transferring, or declaring the same, or by his lawful agent under written authority, and executed with such formalities as are required by law.

Sec. 1047. **When last section to affect certain cases.** The last section shall not be construed to affect the power of a testator in the disposition of his real property by a last will and testament, nor to prevent a trust arising or being extinguished by implication or operation of law, nor to affect the power of a court to compel specific performance of an agreement in relation to such property.

Sec. 1048. **Sale or transfer of boat or vessel.** A sale or transfer of a boat or vessel is not valid unless it be in writing and signed by the party making the transfer.

PART FIVE.

THE CIVIL CODE.

TITLE III.

CIVIL CODE FOR THE DISTRICT OF ALASKA.

CHAPTER ONE.

OF COMMISSIONERS' PRECINCTS.

Sec.
1. Judge to divide district into precincts.
2. Additional commissioners.
(Boundaries and designation.)
3. Jurisdiction and authority of commissioners.
(Omitted area, how attached.)
4. To be provided with blank books.
(Attorney General to make rules, etc.)

Sec. 1. **Judges to divide district into precincts.** It shall be the duty of the judge of each division of the district court for the district of Alaska, by an order to be entered upon the journal of the court, to divide the respective divisions of the district into precincts, and he may thereafter, from time to time, alter the same and establish new precincts as the public convenience may require. He shall define the boundaries of such precincts by topographical lines or otherwise, as may be most convenient.

Sec. 2. **Boundaries and designation.** The boundaries of the precincts shall be so established that, considering distance and means of travel, public convenience may be promoted by requiring the appointment of commissioners by the division of the district court most readily accessible to the area embraced in the precinct. Precincts shall bear such name or number as the court in the order creating it may designate. The precinct lines shall only be regarded for purposes of convenience in fixing identity, but shall not be limitations on the jurisdiction of commissioners as established by law.

Sec. 3. **Omitted area, how attached.** In the event of failure of the judges to include all of the district within precinct limits, the Attorney-General may, by order, cause the omitted area to be attached to or embraced in an established precinct or precincts.

Sec. 4. **Attorney-General to make rules, etc.** The Attorney-General may, from time to time, make such rules and regulations, not in conflict with law, as he may deem necessary to insure the efficient administration of the law and to avoid conflicts of jurisdiction or of officials in the district.

CHAPTER TWO.

OF HUSBAND AND WIFE.

Sec.
5. Marriage a civil contract; at what age contracted.
6. Between what persons prohibited.
7. When voidable.
8. By whom solemnized.
9. How solemnized.
10. Certificate of marriage.
11. Marriages by the de facto clergymen or judicial officers.
12. Ritual of religious bodies recognized.
13. Neither husband nor wife has interest in property of the other.
14. Civil remedies against each other.
15. Contracts between husband and wife.
16. May constitute each other attorney in fact.
17. Neither liable for the other's debts.

Sec. 5. **Marriage a civil contract; at what age contracted.** Marriage is a civil contract, which may be entered into by males of the age of twenty-one years and females of the age of eighteen years who are otherwise capable.

Laws Oreg., Oct. 15, 1862; Hill's Ann. Laws, s. 2852; Rugh v. Ottenheimer, 6 Oreg., 231; Starr v. Hamilton, 1 Deady, 268; Holmes v. Holmes, 1 Saw., 99.

Sec. 6. **Between what persons prohibited.** The following marriages are prohibited:

(1) When either party thereto has a husband or wife living at the time of such marriage;

(2) When the parties thereto are related to each other within and not including the fourth degree of consanguinity, whether of the whole or half blood, computed according to rules of the civil law.

Laws Oreg., Oct. 15, 1862; Hill's Ann. Laws, s. 2853.

Sec. 7. **When voidable.** When either party to a marriage shall be incapable of consenting thereto for want of legal age or sufficient understanding, or when the consent of either party shall be obtained by force or fraud, such marriage is voidable, but only at the suit of the party laboring under the disability or upon whom the force or fraud is imposed.

Laws Oreg., Oct. 15, 1862; Hill's Ann. Laws, s. 2854.

Sec. 8. **By whom solemnized.** Marriages may be solemnized by any minister or priest of any church or congregation in the district anywhere within the district, and by any judicial officer of the district anywhere within his jurisdiction, and commissioners as ex officio justices of the peace are to be deemed judicial officers of the district within the meaning of this section.

Laws Oreg., Oct. 15, 1862; Hill's Ann. Laws, s. 2855.

Sec. 9. **How solemnized.** In the solemnization of marriage no particular form is required, except that the parties thereto shall assent or declare in the presence of the minister, priest, or judicial officer solemnizing the same, and in the presence of at least two attending witnesses, that they take each other to be husband and wife.

Laws Oreg., Oct. 15, 1862; Hill's Ann. Laws, s. 2856.

Sec. 10. **Certificate of marriage.** The person solemnizing the marriage shall give to each of the parties thereto a certificate thereof, specifying therein the names and residence of the parties and of at least two witnesses present at the time and place of such marriage.

Laws Oreg., Oct. 15, 1862; Hill's Ann. Laws, s. 2857.

Sec. 11. **Marriages by the de facto clergymen or judicial officers.** A marriage solemnized before any person professing to be a minister or priest of any church or congregation in the district or any judicial officer thereof is

not void, nor shall the validity thereof be in any way affected, on account of any want of power or authority in such person if such marriage be consummated with a belief on the part of the persons so married, or either of them, that they have been lawfully joined in marriage.

Laws Oreg., Oct. 15, 1862; Hill's Ann. Laws, s. 2861.

Sec. 12. **Ritual of religious bodies recognized.** Illegitimate children become legitimate by the subsequent marriage of their parents with each other; and all marriages to which there are no legal impediments solemnized before or in any religious organization or congregation, according to the established ritual or form commonly practiced therein, are valid.

Laws Oreg., Oct. 15, 1862; Hill's Ann. Laws, s. 2862.

Sec. 13. **Neither husband nor wife has interest in property of the other.** When property is owned by either husband or wife, the other has no such interest as will make the same liable for the contracts or liabilities of either the husband or wife who is not the owner of the property, except as herein provided.

Laws Oreg., Oct. 21, 1878; Hill's Ann. Laws, s. 2869; Pittman v. Pittman, 4 Oreg., 298; Elfelt v. Hinch, 5 id., 255; Lawrence v. Lawrence, 14 id., 77; King v. Voos, id., 91; Wells v. Applegate, 10 id., 521; Jenkins v. Hall, 26 Oreg., 79.

Sec. 14. **Civil remedies against each other.** Should either the husband or wife obtain possession or control of property belonging to the other, either before or after marriage, the owner of the property may maintain an action therefor, or for any right growing out of the same, in the same manner and to the same extent as if they were unmarried.

Laws Oreg., Oct. 21, 1878; Hill's Ann. Laws, s. 2870; Grubbe v. Grubbe, 26 Oreg., 363.

Sec. 15. **Contracts between husband and wife.** A conveyance, transfer, or lien, executed by either husband or wife to or in favor of the other, shall be valid to the same extent as between other persons.

Laws Oreg., Oct. 21, 1878; Hill's Ann. Laws, s. 2871; Jenkins v. Hall, 26 Oreg., 79; Grubbe v. Grubbe, id., 363.

Sec. 16. **May constitute each other attorney in fact.** A husband or wife may constitute the other his or her attorney in fact, to control or dispose of his or her property, and may revoke the same to the same extent and manner as other persons.

Laws Oreg., Oct. 21, 1878; Hill's Ann. Laws, s. 2872; Grubbe v. Grubbe, 26 Oreg., 363.

Sec. 17. **Neither liable for the other's debts.** Neither husband nor wife is liable for the debts or liabilities of the other incurred before marriage, and except as herein otherwise declared they are not liable for the separate debts of each other, nor is the rent or income of such property liable for the separate debts of the other.

Laws Oreg., Oct. 21, 1878; Hill's Ann. Laws, s. 2273; Nine v. Starr, 8 Oreg., 49; Phipps v. Kelly, 12 id., 213; Watkins v. Mason, 11 id., 70.

CHAPTER THREE.

OF PARENTS AND CHILDREN.

Sec.
18. Parents and children liable for each other's support.
19. Maintenance of minor having property.
20. Power of mother over children.

Sec. 18. **Parents and children liable for each other's support.** Parents shall be bound to maintain their children when poor and unable to work to maintain themselves; and children shall be bound to maintain their parents in the like circumstances.

Laws Oreg., Dec. 15, 1863; Hill's Ann. Laws, s. 2875; Carney v. Barritt, 4 Oreg., 171; Baldock v. Johnson, 14 id., 542; Albee v. Albee, 3 id., 321; Barritt v. Barritt, 5 id., 411.

Sec. 19. **Maintenance of minor having property.** If any minor who has a father living have property the income of which is sufficient for his maintenance and education in a manner more expensive than the father can reasonably afford, regard being had to the situation of the father's family, and to all the circumstances of the case, the expenses of the maintenance and education of such child may be defrayed out of the income of his own property, in whole or in part, as shall be judged reasonable by the commissioner, and the charges therefor may be allowed accordingly in the settlement of the accounts of his guardian.

Laws Oreg., Dec. 15, 1863; Hill's Ann. Laws, s. 2876.

Sec. 20. **Power of mother over children.** The power of the mother to bind her children, whether legitimate or illegitimate, shall cease in case of her subsequent marriage, and shall not be exercised during the continuance of such marriage, either by herself or her husband.

Laws Oreg., Dec. 15, 1863; Hill's Ann. Laws, s. 2877.

CHAPTER FOUR.

OF THE ADOPTION OF CHILDREN.

Sec.
21. Application to adopt a child.
22. Consent of parents and guardian.
23. When parent insane, etc.
24. Notice to the parent.
25. Consent of child, when necessary.
26. Decree of adoption and effect of same.
27. Status of adopted child.
28. Adoption terminates relation of parent and child.
29. Appeal from decrees of commissioners.
30. When appeal may be taken.
31. Change of name of adopted child.

Sec. 21. **Application to adopt a child.** Any inhabitant of the district may petition the commissioner in the precinct in which the child resides or may be found, to adopt a child not his own, and, if desired, for a change of the child's name; but the prayer of such petition by a person having a husband or wife shall not be granted unless the husband or wife joins therein.

Laws Oreg., Oct. 24, 1864; Hill's Ann. Laws, s. 2937.

Sec. 22. **Consent of parents and guardian.** The parents of the child, or the survivor of them, shall, except as herein provided, consent in writing to such adoption. If neither parent is living, the guardian of the child, or, if there is no guardian, the next of kin in the district, may give such consent; or if there is no next of kin, the commissioner may appoint some suitable person to act in the proceedings as guardian ad litem of the child, and to give or withhold such consent.

Laws Oreg., Oct. 24, 1864; Hill's Ann. Laws, s. 2938.

Sec. 23. **When parent insane, etc.** If either parent is insane or imprisoned in a penitentiary under a sentence for a term not less than three years, or

has willfully deserted and neglected to provide proper care and maintenance for the child for one year next preceding the time of filing the petition, or is an unfit person to have the care and custody of the child, the commissioner may proceed as if such parent were dead, and in his discretion may appoint some suitable person to act in the proceeding as guardian ad litem of the child, and give or withhold the consent aforesaid; but in all cases notice to the parent, not laboring under said disabilities of insanity or imprisonment mentioned in this section, shall be required.

Laws Oreg., Oct. 24, 1864; Hill's Ann. Laws, s. 2939.

Sec. 24. **Notice to the parent.** If a parent does not consent to the adoption of his or her child the commissioner shall order a copy of the petition and order thereon served on him and the child personally, if found in the district, and, if not, that a notice thereof be published once a week for three successive weeks in such newspaper as the commissioner directs, the last publication to be at least four weeks before the time appointed for the hearing and in all cases a copy of the petition and order shall be served on the child. Like notice shall also be published when a child has no parent living and no guardian or next of kin in said district. The commissioner may order such further notice as he deems necessary or proper.

Laws Oreg., Oct. 24, 1864; Hill's Ann. Laws, s. 2940.

Sec. 25. **Consent of the child, when necessary.** If the child is of the age of fourteen years or upward, the adoption shall not be made without his consent given the commissioner on privy examination.

Laws Oreg., Oct. 24, 1864; Hill's Ann. Laws, s. 2941.

Sec. 26. **Decree of adoption and effect of same.** If, upon such petition so presented and consented to, the commissioner is satisfied of the identity and relations of the persons and that the petitioner is of sufficient ability and in all respects a proper person to bring up the child and furnish suitable nurture and education, having reference to the degree and condition of the parents, and that it is fit and proper that such adoption should take effect, a decree shall be made, setting forth the facts and ordering that from the date of the decree the child shall, to all legal intents and purposes, be the child of the petitioner.

Laws Oreg., Oct. 24, 1864; Hill's Ann. Laws, s. 2942.

Sec. 27. **Status of adopted child.** A child so adopted shall be deemed, for the purposes of inheritance and all other legal consequences and incidents of the natural relation of parents and children, the child of the parents by adoption, the same as if he had been born to them in lawful wedlock, except that he shall not be capable of taking property expressly limited to heirs of the body or bodies of the parent by adoption nor property from the lineal or collateral kindred of said parents by right of representation.

Laws Oreg., Oct. 24, 1864; Hill's Ann. Laws, s. 2942.

Sec. 28. **Adoption terminates relation of parent and child.** The parents of such child shall be deprived by the same of all legal rights as respects the child, and the child shall be freed from all obligation of maintenance and obedience as respects his parents.

Laws Oreg., Oct. 24, 1864; Hill's Ann. Laws, s. 2944.

Sec. 29. **Appeal from decrees of commissioners.** Any petitioner, parent or other party to the proceedings may appeal to the district court from the judgment of the commissioner on such petition in like manner as appeals

may be taken from judgments of such commissioner in proceedings respecting the administration of estates of decedents; and any child made the subject of such petition may, by his guardian ad litem, appeal in like manner; but no bond shall be required of or costs awarded against such child or guardian ad litem.

Laws Oreg., Oct. 24, 1864; Hill's Ann. Laws, s. 2945.

Sec. 30. **When appeal may be taken.** A parent who has not before the hearing of a petition for the adoption of his child, had personal notice thereof, may, at any time within one year after actual notice, apply to the district court to reverse the judgment; the court, after due notice, may, in its discretion, reverse or modify the same.

Laws Oreg., Oct. 24, 1864; Hill's Ann. Laws, s. 2946.

Sec. 31. **Change of name of adopted child.** If in a petition for the adoption of a child a change of the child's name is requested, the commissioner upon adjudging the adoption may also adjudge such change of name and grant a certificate thereof without the notice required by the following sections.

Laws Oreg., Oct. 24, 1864; Hill's Ann. Laws, s. 2949.

CHAPTER FIVE.

OF THE CHANGE OF NAME.

Sec.
32. Application for change of name.
Sec.
33. Proceedings on application.

Sec. 32. **Application.** Applications for change of names of other persons may be heard and determined by the district court. No lawful change of the name of a person, except a woman upon her marriage or divorce, shall be made in the district unless for sufficient reasons not inconsistent with the public interest and satisfactory to the court.

Laws Oreg., Oct. 24, 1864; Hill's Ann. Laws, s. 2947.

Sec. 33. **Proceedings.** Before adjudging a change of name, except as provided in section forty-nine, the court shall require public notice of the application therefor to be given, that all persons may offer and show cause, if they have any, why the same should not be granted. The court shall also require public notice to be given of the change adjudged, and on return of proof thereof may grant certificate, under the seal of the court, of the name the party is to have, and which shall thereafter be his legal name.

Laws Oreg., Oct. 24, 1864; Hill's Ann. Laws, s. 2948.

CHAPTER SIX.

OF THE AGE OF MAJORITY.

Sec.
34. Majority of males and females.
Sec.
35. Marriage of females equivalent to majority.

Sec. 34. **Majority of males and females.** In the district all persons shall be deemed to have arrived at majority at the age of twenty-one years, and

thereafter shall have control of their own actions and business, have all the rights, and be subject to all the liabilities, of citizens of full age.

Laws Oreg., Oct. 11, 1864; Hill's Ann. Laws, s. 2951.

Sec. 35. **Marriage of females equivalent to majority.** All female persons shall be deemed to have arrived at the age of majority upon their being married according to law.

Laws Oreg., Oct. 11, 1864; Hill's Ann. Laws, s. 2953.

CHAPTER SEVEN.

OF ESTATES IN DOWER.

Sec.
36. Dower of widow.
37. When dower shall be assigned by the district court.
38. Warrant for assignment of dower.
39. Proceedings and warrant of commissioner.
40. When property can not be divided.
41. Widow may occupy with heirs.
42. Dower, how barred by jointure.
43. Evidence of assent to jointure.
44. Pecuniary provision a bar to dower.
45. When widow may elect between jointure and dower.
46. When to elect between devise and dower.
47. When widow deemed to have elected.
48. When widow to be endowed anew.
49. Alien or nonresident entitled to dower.
50. Widow may remain in dwelling house one year.
51. Damages for withholding dower.
52. Damages, how estimated.
53. Not to include use of permanent improvements.
54. Damages against heirs.
55. Collusive recovery of dower not to prejudice infant heirs.

Sec. 36. **Dower of widow.** The widow of every deceased person shall be entitled to dower, or the use during her natural life of one-third part in value of all the lands whereof her husband died seized of an estate of inheritance.

Laws Oreg., Jan. 16, 1854; Hill's Ann. Laws, s. 2954; Whiteaker v. Vanschoiack, 5 Oreg., 113; Farnam v. Loomis, 2 id., 29; Love v. Love, 8 id., 23; McKay v. Freeman, 6 id., 449; Fabrus v. Hayes, 9 id., 81; Leonard v. Grant, 8 id., 276.

Sec. 37. **When dower shall be assigned by the district court.** When a widow is entitled to dower in the lands of which her husband died seized, it may be assigned to her by the district court upon application of the widow or any other person interested in the lands; notice of application shall be given to such heirs, devisees, or other persons, in such manner as the court shall direct.

Laws Oreg., Jan. 16, 1854; Hill's Ann. Laws, s. 2961; McKay v. Freeman, 6 Oreg., 449.

Sec. 38. **Warrant for assignment of dower.** For the purpose of assigning such dower the district court shall direct a warrant to issue to three discreet and disinterested persons, as commissioners, authorizing and requiring them to set off the dower by metes and bounds, when it can be done without injury to the whole estate.

Laws Oreg., Jan. 16, 1854; Hill's Ann. Laws, s. 2962.

Sec. 39. **Proceedings and warrant of commissioner.** The commissioners shall be sworn by any officer authorized to administer impartially oaths to discharge their duties, and shall, as soon as may be, set off the dower according to the command of such warrant, and make return of their doings,

with an account of their charges and expenses, in writing, to the district court; and the same being confirmed by the court and recorded, and an attested copy thereof filed in the office of the commissioner of the precinct where the lands are situated, the dower shall remain fixed and certain unless such confirmation be set aside or reversed; all costs to be apportioned in the discretion of the court.

Laws Oreg., Jan. 16, 1854; Hill's Ann. Laws, s. 2963.

Sec. 40. **When property can not be divided.** When the estate or any part thereof out of which dower is to be assigned can not be equitably divided by metes and bounds, the dower may be assigned of the rents, issues, and profits thereof, to be had and received by the widow as a tenant in common with the other owners of the estate.

Laws Oreg., Jan. 16, 1854; Hill's Ann. Laws, s. 2964.

Sec. 41. **Widow may occupy with heirs.** When a widow is entitled to dower in the lands of which her husband died seized she may, if residing thereon, continue to occupy the same, and enjoy the rents, issues, and profits thereof with the children or other heirs of the deceased, or if not residing thereon may receive one-third part of the rents, issues, and profits thereof, so long as the heirs or others interested do not object, without having the dower assigned.

Laws Oreg., Jan. 16, 1854; Hill's Ann. Laws, s. 2965.

Sec. 42. **Dower, how barred by jointure.** A woman may be barred of her dower in all the lands of her husband by jointure settled on her with her assent before the marriage: Provided, Such jointure consists of a freehold estate in lands, for the life of the wife at least, to take effect in possession or profit immediately on the death of her husband.

Laws Oreg., Jan. 16, 1854; Hill's Ann. Laws, s. 2967.

Sec. 43. **Evidence of assent to jointure.** Such assent shall be expressed, if the woman be of the full age of twenty-one, by her becoming a party to the conveyance by which it is settled, and if she be under that age by her joining with her father or guardian in such conveyance.

Laws Oreg., Jan. 16, 1854; Hill's Ann. Laws, s. 2968.

Sec. 44. **Pecuniary provision a bar to dower.** Any pecuniary provision that shall be made for the benefit of an intended wife, and in lieu of dower, shall, if assented to as provided in the preceding section, bar her right of dower in all the lands of her husband.

Laws Oreg., Jan. 16, 1854; Hill's Ann. Laws, s. 2969.

Sec. 45. **When widow may elect between jointure and dower.** If any such jointure or pecuniary provision be made before marriage, and without the assent of the intended wife, or if it be made after marriage, she shall make her election after the death of her husband whether she will take such jointure or pecuniary provision or be endowed with the lands of her husband, but she shall not be entitled to both.

Laws Oreg., Jan. 16, 1854; Hill's Ann. Laws, s. 2970; 20 Oreg., 165.

Sec. 46. **When to elect between devise and dower.** If any lands be devised to a woman, or other provision be made for her in the will of her husband, expressly in lieu of dower, she shall make her election whether she will take the land so devised or the provision so made, or whether she will be endowed by the lands of her husband; but she shall not be entitled to both unless it plainly appears by the will to have been so intended by the testator.

Laws Oreg., Jan. 16, 1854; Hill's Ann. Laws, s. 2971.

Sec. 47. When widow deemed to have elected. When a widow shall be entitled to an election under either of the two sections last preceding she shall be deemed to have elected to take such jointure, devise, or other provision unless within one year after the death of her husband she shall file in the district court her election in writing to relinquish her rights under the jointure, devise or provision.

Laws Oreg., Jan. 16, 1854; Hill's Ann. Laws, s. 2972.

Sec. 48. When widow to be endowed anew. If a woman be lawfully evicted of lands assigned to her as dower or settled upon her as jointure, or be deprived of the provision made for her by the will or otherwise, in lieu of dower, she may be endowed anew in like manner as if such assignment, jointure, or other provision had not been made.

Laws Oreg., Jan. 16, 1854; Hill's Ann. Laws, s. 2973.

Sec. 49. Alien or non-resident entitled to dower. A woman being an alien shall not on that account be barred of her dower; and any woman residing out of the district shall be entitled to dower of the lands of her deceased husband lying in the district of which her husband died seized of an estate of inheritance; and the same may be assigned to her, or recovered by her, in like manner as if she and her deceased husband had been residents within the district at the time of his death.

Laws Oreg., Jan. 16, 1854; Hill's Ann. Laws, s. 2974.

Sec. 50. Widow may remain in dwelling house one year. A widow may remain in the dwelling house of her husband one year after his death without being chargeable with the rent therefor, and shall have her reasonable sustenance out of the estate for one year.

Laws Oreg., Jan. 16, 1854; Hill's Ann. Laws, s. 2976.

Sec. 51. Damages for withholding dower. Whenever, in any action brought for the purpose, a widow shall recover her dower in lands of which her husband died seized, she shall be entitled also to recover damages for the withholding of such dower.

Laws Oreg., Jan. 16, 1854; Hill's Ann. Laws, s. 2977.

Sec. 52. Damages, how estimated. Such damage shall be one-third of the annual value of the mesne profits of the lands in which she shall so recover her dower, to be estimated in an action against the heirs of her husband from the time of his death, and in actions against other persons from the time of demanding her dower of such persons.

Laws Oreg., Jan. 16, 1854; Hill's Ann. Laws, s. 2978.

Sec. 53. Not to include use of permanent improvements. Such damages shall not be estimated for the use of any permanent improvements made after the death of her husband by his heirs, or by any other person claiming title to such lands.

Laws Oreg., Jan. 16, 1854; Hill's Ann. Laws, s. 2979.

Sec. 54. Damages against heirs. When a widow shall recover her dower in any lands aliened by the heir of her husband, she shall be entitled to recover of such heir, in a civil action, her damages for withholding such dower from the time of the death of her husband to the time of the alienation by the heir, not exceeding six years in the whole; and the amount which she shall be entitled to recover from such heir shall be deducted from the amount she would otherwise be entitled to recover from such grantee; and any amount re-

covered as damages from such grantee shall be deducted from the sum she would otherwise be entitled to recover from such heir.

Laws Oreg., Jan. 16, 1854; Hill's Ann. Laws, s. 2980.

Sec. 55. **Collusive recovery of dower not to prejudice infant heirs.** When a widow not having a right of dower shall, during the infancy of the heirs of the husband, or any of them, or of any other person entitled to the lands, recover dower by the default or collusion of the guardian of such infant heirs, or such other person, such heir or other person so entitled shall not be prejudiced thereby, but when he comes of full age he shall have an action against such widow to recover the lands so wrongfully awarded for dower.

Laws Oreg., Jan. 16, 1854; Hill's Ann. Laws, s. 2982.

CHAPTER EIGHT.

OF ESTATE BY THE CURTESY.

Sec.
56. Husband's life estate.

Sec. 56. **Husband's life estate.** When any man and his wife shall be seized in her right of any estate of inheritance in lands the husband shall, on the death of his wife, hold the lands for his life, as tenant thereof by the curtesy, although such husband and wife may not have had issue born alive.

Laws Oreg., Jan. 16, 1854; Hill's Ann. Laws, s. 2983; Gilmore v. Burch, 7 Oreg., 374; Besser v. Joyce, 9 Ibid., 310; Elliot v. Teal, 5 Saw., 252; Jenkins v. Hall, 26 Oreg., 25.

CHAPTER NINE.

OF GENERAL PROVISIONS CONCERNING ESTATES IN LANDS.

Sec.
57. Person in possession liable for rent.
58. Rent, how recovered.
59. Last two sections not to exclude other remedies.
60. Determination of estates at will and by sufferance.
61. Action for injury to inheritance.
62. Remedy of tenants in common.

Sec. 57 **Person in possession liable for rent.** Every person in possession of land out of which any rent is due, whether it was originally demised in fee, or for any other estate of freehold, or for any term of years, shall be liable for the amount or proportion of rent due from the land in his possession, although it be only a part of what was originally demised.

Laws Oreg., Jan. 10, 1854; Hill's Ann. Laws, s. 2984; Stewart v. Perkins, 3 Oreg., 508; Holman v. D. Lin, 30 Oreg., 438.

Sec. 58. **Rent, how recovered.** Such rent may be recovered in an action and the deed or demise, or any other instrument in writing, if there be any, showing the provisions of the lease, may be used in evidence by either party to prove the amount due from the defendant.

Laws Oreg., Jan. 10, 1854; Hill's Ann. Laws, s. 2985; Holman v. D. Lin, supra.

Sec. 59. **Last two sections not to exclude other remedies.** Nothing contained in the two preceding sections shall deprive landlords of any other legal

remedy for the recovery of their rents, whether secured to them by their leases or provided by law.

Laws Oreg., Jan. 10, 1854; Hill's Ann. Laws, s. 2986.

Sec. 60. **Determination of estates at will and by sufferance.** All estates at will or by sufferance may be determined by either party, by three months' notice in writing given to the other party; and when the rent reserved in a lease at will is payable at periods of less than three months, the time of such notice shall be sufficient if it be equal to the interval between the times of payment; and in all cases of neglect or refusal to pay the rent due on a lease at will, fourteen days' notice to quit, given in writing by the landlord to the tenant, shall be sufficient to determine the lease.

Laws Oreg., Jan. 10, 1854; Hill's Ann. Laws, s. 2987; 18 Oreg., 160; Forsythe v. Pogue, 25 Oreg., 481.

Sec. 61. **Action for injury to inheritance.** A person seized of an estate in remainder or reversion may maintain a civil action for any injury done to the inheritance, notwithstanding any intervening estate for life or years.

Laws Oreg., Jan. 18, 1854; Hill's Ann. Laws, s. 2990.

Sec. 62. **Remedies of tenants in common.** A tenant in common may maintain any proper action, or proceeding against his cotenant for receiving more than his just proportion of the rents or profits of the estate owned by them in common; and joint tenancy is abolished, and all persons having an undivided interest in real property are to be deemed and considered tenants in common.

Laws Oreg., Oct. 17, 1862; Hill's Ann. Laws, s. 2991.

CHAPTER TEN.

OF THE PROPERTY OF MARRIED WOMEN.

Sec.
63. Separate property of wife not subject to husband's debts.
64. Property acquired during coverture.
65. District court may adjudge that husband has abandoned wife; effect of.
66. Return of husband not to abate action.
67. Liability for civil injuries.
68. Wife's contracts binding upon her.
69. Civil disabilities removed.
70. Register of personal property.
71. Effect of registration.
72. Certified copies of register.

Sec. 63. **Separate property of wife not subject to husband's debts.** The property and pecuniary rights of every married woman at the time of her marriage, or afterwards acquired by gift, devise, or inheritance, shall not be subject to the debts or contracts of her husband, and she may manage, sell, convey, or devise the same by will to the same extent and in the same manner that her husband can property belonging to him.

Laws Oreg., Oct. 21, 1878; Hill's Ann. Laws, s. 2992; Brummet v. Weaver, 2 Oreg., 173; Rugh v. Ottenheimer, 6 id., 231; Atteberry v. Atteberry, 8 id., 224; Besser v. Joyce, 9 id., 310; Starr v. Hamilton, 1 Deady, 272; Stubblefield v. Menzies, 8 Saw., 41; Gray v. Holland, 9 Oreg., 512; 20 Oreg., 166; Velton v. Marmack, 23 id., 282; Grubbe v. Grubbe, 26 id., 369.

Sec. 64. **Property acquired during coverture.** All propertry, either real or personal, acquired by any married woman during coverture by her own labor shall not be liable for the debts, contracts, or liabilities of her husband, but shall in all respects be subject to the same exemptions and liabilities as prop-

erty owned at the time of her marriage or afterwards acquired by gift, devise, or inheritance.

Laws Oreg., Oct. 15, 1872; Hill's Ann. Laws, s. 2993.

Sec. 65. **District court may adjudge that husband has abandoned wife; effect of.** When any married man residing in the district shall abandon his wife without making suitable provision for her support for a period of one year, the district court may, upon her petition setting up the facts of such abandonment, verified by her own oath, summarily proceed to hear the petition and adjudge the fact as to such abandonment, which adjudication shall be conclusive as to such fact as to third persons; and if such abandonment shall be adjudged thereupon, such married woman, during the absence of her husband, may in all respects contract in relation to, sell, convey, and deal with her separate property, real and personal, in the same manner as if she were a feme sole, and may in her own name, without being joined with her husband, sue and be sued in relation to her separate property on any contract made by her after such adjudication and before the return of her husband.

Laws Oreg., Oct. 15, 1872; Hill's Ann. Laws, s. 2994.

Sec. 66. **Return of husband not to abate action.** No action wherein a married woman shall be a party, under the provisions of this code, shall be abated on the return of her husband into the district, but he may, on his application, be admitted to prosecute or defend such action jointly with her.

Laws Oreg., Oct. 15, 1872; Hill's Ann. Laws, s. 2995.

Sec. 67. **Liabilities for civil injuries.** For all civil injuries committed by a married woman damages may be recovered from her alone, and her husband shall not be responsible therefor, except in case where he would be jointly responsible with her if the marriage did not exist

Laws Oreg., Oct. 21, 1878; Hill's Ann. Laws, s. 2996.

Sec. 68. **Wife's contracts binding upon her.** Contracts may be made by a wife, and liabilities incurred, and the same enforced by or against her to the same extent and in the same manner as if she were unmarried.

Laws Oreg., Oct. 21, 1878; Hill's Ann. Laws, s. 2997; 20 Oreg., 166; Grubbe v. Grubbe, 26, Oreg., 363.

Sec. 69. **Civil disabilities removed.** All laws which impose or recognize civil disabilities upon a wife, which are not imposed or recognized as existing as to the husband, are hereby repealed; and for any unjust usurpation of her property or natural rights she shall have the same right to appeal in her own name alone to all the courts for redress that the husband had.

Laws Oreg., Oct. 21, 1880; Hill's Ann. Laws, s. 2998; 14 Oreg., 98; 18 id., 467.

Sec. 70. **Register of personal property.** The commissioner for each precinct shall keep a register, in which he shall enter a description of the personal estates of married women, as hereinafter directed.

Laws Oreg., Oct. 24, 1866; Hill's Ann. Laws, s. 2999.

Sec. 71. **Effect of registration.** A married woman possessed of or owning any personal property or pecuniary rights may make a descriptive list of the same, and make and subscribe on the said list an oath that the property and rights therein described belonged to her at the time of her marriage, or that she has acquired the same by her own labor or by bequest, inheritance or by the gift of some person named other than her husband; and the list and affidavit shall be recorded in the register, and shall be prima facie evidence

of the facts therein stated, and property not so registered shall be deemed prima facie to be the property of the husband rather than of the wife.

Laws Oreg., Oct. 24, 1866; Hill's Ann. Laws, s. 3000; 5 Oreg., 259.

Sec. 72. **Certified copies of register.** A certified copy of the register shall be original evidence equally with the original list and affidavit, and the fees for recording and for making the certified copies of the register shall be the same as in the case of deeds.

Laws Oreg., Oct. 24, 1866; Hill's Ann. Laws, s. 3001.

CHAPTER ELEVEN.

OF CONVEYANCES OF REAL PROPERTY.

Sec.
73. Conveyance, how made.
74. Conveyance of wife's property.
75. Effect of quitclaim.
76. Word "heirs" not necessary to convey fee simple.
77. Conveyance by tenant for life or years.
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80. Conveyance of lands held adversely by another.
81. Joint conveyance to create cotenancy.
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109. Patents, decrees, etc., affecting lands may be recorded.
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111. Defective acknowledgments cured.
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113. Other defective deeds cured.
114. Judicial sales.
115. Defectively executed sales by executors and administrators.
116. Records of such deeds receivable in evidence.
117. Defective execution of conveyances by executors; decree in such cases.
118. Transcribing records for new precinct to have the effect of the original.

Sec. 73. **Conveyance, how made.** A conveyance of lands, or of any estate or interest therein, may be made by deed, signed and sealed by the person from whom the estate or interest is intended to pass, being of lawful age, or by his lawful agent or attorney, and acknowledged or proved, and recorded as directed in this chapter, without any other act or ceremony whatever.

Laws Oreg., Oct. 13, 1854; Hill's Ann. Laws, s. 3002; Lambert v. Smith, 9 Oreg., 185-191; Knights v. Smith, 1 ibid., 277; Edward v. Perkins, 7 ibid., 149; 10 ibid., 131; Field v. Columbet, 4 Saw., 527.

Sec. 74. **Conveyance of wife's property.** A husband and wife may, by their joint deed, convey the real estate of the wife, in like manner as she might do by her separate deed if she were unmarried.

Laws Oreg., Oct. 13, 1854; Hill's Ann. Laws, s. 3003; Elliot v. Teale, 5 Saw., 249; Moore v. Fuller, 6 Oreg., 272; Frarey v. Wheeler, 4 ibid., 190; Burston v. Jackson, 9 ibid., 275; 8 ibid., 315; Velton v. Carmack, 23 ibid., 282.

Sec. 75. **Effect of quitclaim.** A deed of quitclaim and release, of the form in common use, shall be sufficient to pass all the real estate which the grantor could lawfully convey by a deed of bargain and sale.

Laws Oreg., Oct. 13, 1854; Hill's Ann. Laws, s. 3004; Taggart v. Risley, 4 Oreg., 235; Dolph v. Barney, 5 ibid., 192; Lambert v. Smith, 9 ibid., 185; Shirley v. Welch, 2 ibid., 288; 12 ibid., 10; 19 ibid., 343; Myers v. Reed, 9 Saw., 13.

Sec. 76. **Word "heirs" not necessary to convey fee simple.** The term "heirs," or other words of inheritance, shall not be necessary to create or convey an estate in fee simple; and any conveyance of any real estate hereafter executed shall pass all the real estate of the grantor, unless the intent to pass a less estate shall appear by express terms, or be necessarily implied in the terms of the grant.

Laws Oreg., Oct. 13, 1854; Hill's Ann. Laws, s. 3005.

Sec. 77. **Conveyance by tenant for life or years.** A conveyance made by a tenant for life or years, purporting to grant a greater estate than he possessed or could lawfully convey, shall not work a forfeiture of his estate, but shall pass to the grantee all the estate which such tenant could lawfully convey.

Laws Oreg., Oct. 13, 1854; Hill's Ann. Laws, s. 3006.

Sec. 78. **Covenants not implied.** No covenant shall be implied in any conveyance of real estate, whether such conveyance contain special covenants or not.

Laws Oreg., Oct. 13, 1854; Hill's Ann. Laws, s. 3007; Taggart v. Risley, supra; Edwards v. Perkins, 7 Oreg., 149.

Sec. 79. **Mortgage not to imply covenant to pay money.** No mortgage shall be construed as implying a covenant for the payment of the sum thereby intended to be secured; and when there shall be no express covenant for such payment contained in the mortgage, and no bond or other separate instrument to secure such payment shall have been given, the remedies of the mortgagee shall be confined to the lands mentioned in the mortgage.

Laws Oreg., Oct. 13, 1854; Hill's Ann. Laws, s. 3008; Myer v. Beal, 5 Oreg., 131.

Sec. 80. **Conveyance of lands held adversely by another.** No grant or conveyance of land or interest therein shall be void for the reason that at the time of the execution thereof such lands shall be in the actual possession of another claiming adversely.

Laws Oreg., Oct. 13, 1854; Hill's Ann. Laws, s. 3009.

Sec. 81. **Joint conveyance to create cotenancy.** Every conveyance or devise of lands or interests therein, made to two or more persons, other than to executors and trustees, as such, shall be construed to create a tenancy in common in such estate, unless it be expressly declared in such conveyance or devise that the grantees or devisees shall take the lands as joint tenants.

Laws Oreg., Oct. 13, 1854; Hill's Ann. Laws, s. 3010; Myers v. Reed, 9 Saw., 133.

Sec. 82. **Execution and acknowledgment of deeds.** Deeds executed within the district, of lands or any interest in lands therein, shall be executed in the presence of two witnesses, who shall subscribe their names to the same

as such; and the persons executing such deeds may acknowledge the execution thereof before any judge, clerk of the district court, notary public, or commissioner within the district, and the officer taking such acknowledgment shall endorse thereon a certificate of the acknowledgment thereof and the true date of making the same under his hand.

Laws Oreg., Oct. 13, 1854; Hill's Ann. Laws, s. 3011; Goodenough v. Warren, 5 Saw., 494.

Sec. 83. **Same in States.** If any deed shall be executed in any State, Territory, or District of the United States, such deed may be executed according to the laws of such State, Territory, or District, and the execution thereof may be acknowledged before any judge of a court of record, justice of the peace, or notary public, or other officer authorized by the laws of such State, Territory, or District to take the acknowledgment of deeds therein, or before any commissioner appointed for such purpose.

Laws Oreg., Oct. 13, 1854; Hill's Ann. Laws, s. 3012; 12 Oreg., 167.

Sec. 84. **Certificate of official character.** In the cases provided for in the last section, unless the acknowledgment be taken before a commissioner appointed for that purpose, or before a notary public certified under his notarial seal, or before the clerk of a court of record certified under the seal of the court, such deed shall have attached thereto a certificate of the clerk or other proper certifying officer of a court of record of the county or district within which such acknowledgment was taken, under the seal of his office, that the person whose name is subscribed to the certificate of acknowledgment was at the date thereof such officer as he is therein represented to be, and that he believes the signature of such person subscribed thereto to be genuine, and that the deed is executed and acknowledged according to the laws of such State, Territory, or District.

Laws Oreg., Feb. 20, 1891; Knighton v. Smith, 1 Oreg., 276.

Sec. 85. **Acknowledgment of deeds in foreign country.** If such deed be executed in any foreign country, it may be executed according to the laws of such country, and the execution thereof may be acknowledged before any notary public therein, or before any minister plenipotentiary, minister extraordinary, minister resident, charge d'affaires, commissioner, or consul of the United States, appointed to reside therein, which acknowledgment shall be certified thereon by the officer taking the same under his hand; and if taken before a notary public, his seal of office shall be affixed to such certificate.

Laws Oreg., Jan. 13, 1854; Hill's Ann. Laws, s. 3014.

Sec. 86. **Acknowledgment by married woman.** When a married woman residing in the district shall join with her husband in a deed of conveyance of real property situated within the district she shall acknowledge that she executed such deed freely and voluntarily.

Laws Oreg., Feb. 25, 1889; Hill's Ann. Laws, s. 3015; Moore v. Thomas, 1 Oreg., 201; Harty v. Ladd, 3 Ibid., 353; Goodenough v. Warren, 5 Saw., 494; 16 Oreg., 225.

Sec. 87. **Conveyance by married woman residing out of district.** When any married woman not residing in the district shall join with her husband in any conveyance of real estate situated within the district, the conveyance shall have the same effect as if she were sole, and the acknowledgment or proof of the execution of such conveyance by her may be the same as if she were sole.

Laws Oreg., Jan. 13, 1854; Hill's Ann. Laws, s. 3016; Moreland v. Brady, 5 Oreg., 303.

Sec. 88. **Officer taking acknowledgment must know grantor.** No acknowledgment of any conveyance having been executed shall be taken by any

officer unless he shall know or have satisfactory evidence that the person making such acknowledgment is the individual described in and who executed such conveyance.

Laws Oreg., Jan. 13, 1854; Hill's Ann. Laws, s. 3017.

Sec. 89. **Proof of execution by subscribing witnesses.** Proof of the execution of any conveyance may be made before any officer authorized to take acknowledgment of deeds, and shall be made by a subscribing witness thereto, who shall state his own place of residence, and that he knew the person described in and who executed such conveyance; and such proof shall not be taken unless the officer is personally acquainted with such subscribing witness or has satisfactory evidence that he is the same person who was a subscribing witness to such instrument.

McIntyre v. Kamm, 13 Oreg., 252.

Sec. 90. **Proof when witnesses dead or absent.** When any grantor is dead, out of the district, or refuses to acknowledge his deed, and all the subscribing witnesses to such deed shall also be dead or reside out of the district, the same may be proved before the district court, or any judge thereof, by proving the handwriting of the grantor, and of any subscribing witness thereto.

Laws Oreg., Jan. 13, 1854; Hill's Ann. Laws, s. 3019; 7 Oreg., 104.

Sec. 91. **Witness to execution of deed.** Upon the application of any grantee, or of any person claiming under him, verified by the oath of the applicant, setting forth that the grantor is dead, out of the district, or refused to acknowledge his deed, and that any witness to such conveyance refuses to appear and testify touching the execution thereof, and that such conveyance cannot be proven without his evidence, any officer authorized to take the acknowledgment or proof of conveyance, except a commissioner of deeds, may issue a subpœna requiring such witness to appear and testify before such officer touching the execution of such conveyance.

Laws Oreg., Jan. 13, 1854; Hill's Ann. Laws, s. 3020.

Sec. 92. **Penalty for refusing to appear or testify.** Every person duly served with such subpœna who shall, without reasonable cause, refuse or neglect to appear, or appearing shall refuse to answer upon oath touching the matter aforesaid, shall forfeit to the injured party one hundred dollars, and may also be committed to prison as for a contempt by the officer who issued such subpœna, there to remain until he shall submit to answer on oath as aforesaid.

Laws Oreg., Jan. 13, 1854; Hill's Ann. Laws, s. 3021.

Sec. 93. **Certificate of proof to be endorsed on deed.** Every officer who shall take the proof of any conveyance shall endorse his certificate thereon, signed by himself on the conveyance, and in such certificate shall set forth the things hereinbefore required to be done, known, or proved, together with the names of the witnesses examined before such officer, and their places of residence, and the substance of the evidence by them given.

Hill's Ann. Laws, s. 3022.

Sec. 94. **Deed proved may be read in evidence.** Every conveyance acknowledged or proved or certified in the manner hereinbefore prescribed by any of the officers before named may be read in evidence without further proof thereof, and shall be entitled to be recorded in the precinct in which the lands lie.

Laws Oreg., Jan. 13, 1854; Hill's Ann. Laws, s. 3023; 5 Oreg., 206; 12 ibid., 481; 19 ibid., 469.

Sec. 95. **Records of deeds and mortgages.** Separate books shall be provided by the commissioner in each recording district or precinct for the recording of deeds and mortgages, in one of which books all deeds left with such commissioner shall be recorded at full length, with the certificates of acknowledgment or proof of the execution thereon, and in the other all mortgages left with the commissioner shall in like manner be recorded.

Laws Oreg., Jan. 13, 1854; Hill's Ann. Laws, s. 3024.

Sec. 96. **Certificate on conveyance.** The commissioner shall certify upon each conveyance recorded by him the time when it was received and the reference to the book and the page where it is recorded, and every conveyance shall be considered as recorded at the time it was so received.

Laws Oreg., Jan. 13, 1854; Hill's Ann. Laws, s. 3025.

Sec. 97. **Index of records.** The commissioner shall also keep a proper index, direct and inverted, to the books for the recording of deeds, and also one to the books for the recording of mortgages, in which he shall enter alphabetically the name of every party to each and every instrument recorded by him, with a reference to the book and page where the same is recorded.

Laws Oreg., Jan. 13, 1854; Hill's Ann. Laws, s. 3026; Commissioners v. Babcock, 5 Oreg., 452.

Sec. 98. **Unrecorded conveyance, when void as to third persons.** Every conveyance of real property within the district hereafter made which shall not be filed for record as provided in this chapter shall be void against any subsequent innocent purchaser in good faith and for a valuable consideration of the same real property, or any portion thereof, whose conveyance shall be first duly recorded.

Laws Oreg., Oct. 17, 1862; Hill's Ann. Laws, s. 3027; Moore v. Thomas, 1 Oreg., 201; Musgrove v. Bonser, 5 ibid., 313; Baker v. Woodward, 12 ibid., 3; Fleschner v. Sumpter, ibid., 161; 14 ibid., 143, 452; 19 ibid., 286, 351, 469.

Sec. 99. **Record or transcript evidence.** The record of a conveyance duly recorded, or a transcript thereof duly certified by the commissioner in whose office the same may have been recorded, may be read in evidence in any court in the district with the like force and effect as the original instrument; but the effect of such evidence may be rebutted by other competent evidence.

Laws Oreg., Jan. 13, 1854; Hill's Ann. Laws, s. 3028; 15 Oreg., 508.

Sec. 100. **Record of deeds of defeasance.** When a deed purports to be an absolute conveyance in terms, but is made or intended to be made defeasible by force of a deed of defeasance, or other instrument for that purpose, the original conveyance shall not be thereby defeated or affected as against any person other than the maker of the defeasance, or his heirs or devisees, or persons having actual notice thereof, unless the instrument of defeasance shall have been recorded in the office of the commissioner for the precinct where the lands lie.

Laws Oreg., Jan. 13, 1854; Hill's Ann. Laws, s. 3029; Haseltine v. Vespey, 13 Oreg., 301; Exeon v. Daucke, 24 Oreg., 1010.

Sec. 101. **Record of assignment of mortgage.** The recording of the assignment of a mortgage shall not in itself be deemed notice of such assignment to the mortgagor, his heirs or personal representatives, so as to invalidate any payment made by them or either of them to the mortgagee.

Laws Oreg., Jan. 13, 1854; Hill's Ann. Laws, s. 3030; Bamberger v. Geiser, 24 Oreg., 204.

Sec. 102. **Discharge of mortgage by marginal entry.** Any mortgage that has been or may hereafter be recorded may be discharged by an entry in the

margin of the record thereof signed by the mortgagee or his personal representative or assignee, acknowledging the satisfaction of the mortgage, in the presence of the commissioner or a deputy, who shall subscribe the same as a witness, and such entry shall have the same effect as a deed of release duly acknowledged and recorded.

Laws Oreg., Jan. 13, 1854; Hill's Ann. Laws, s. 3031. Bamberger v. Geiser, supra.

Sec. 103. **Discharge upon certificate of mortgagee.** Any mortgage may also be discharged upon the record thereof by the commissioner in whose custody it shall be whenever there shall be presented to him a certificate executed by the mortgagee, his personal representatives or assigns, acknowledged or proved and certified as hereinbefore prescribed to entitle conveyances to be recorded, specifying that such mortgage has been paid or otherwise satisfied or discharged.

Laws Oreg., Jan. 13, 1854; Hill's Ann. Laws, s. 3032; Bamberger v. Geiser, supra.

Sec. 104. **Certificate of mortgagee to be recorded.** Every such certificate and the proof or acknowledgment thereof shall be recorded at full length, and a reference shall be made to the book and page containing such record in the minute of the discharge of such mortgage made by the commissioner upon the record thereof.

Laws Oreg., Jan. 13, 1854; Hill's Ann. Laws, s. 3033.

Sec. 105. **Penalty for refusing to discharge mortgage.** If any mortgagee, or his personal representative or assignee, as the case may be, after full performance of the condition of the mortgage, whether before or after a breach thereof, shall, for the space of ten days after being thereto requested, and after tender of his reasonable charges, refuse or neglect to discharge the same as provided in this chapter, or to execute and acknowledge a certificate of discharge or release thereof, he shall be liable to the mortgagor, his heirs or assigns, in the sum of one hundred dollars damages, and also for all actual damages occasioned by such neglect or refusal, to be recovered in an action.

Laws Oreg., Jan. 13, 1854; Hill's Ann. Laws, s. 3034.

Sec. 106. **Power of attorney and contract may be recorded.** Every letter of attorney or other instrument containing a power to convey lands as agent or attorney for the owner of such lands, and every executory contract for the sale or purchase of lands when acknowledged or proved in the manner prescribed in this title for the acknowledgment or proof of conveyances, may be recorded in the commissioner's office of any precinct in which the lands to which such power or contract relates may be situated; and when so acknowledged or proved and the record thereof when recorded, or the transcript of such record duly certified, may be read in evidence in any court in the district without further proof of the same.

Laws Oreg., Jan. 13, 1854; Hill's Ann. Laws, s. 3035; 12 Oreg., 481.

Sec. 107. **Instrument so recorded, how revoked.** No letter of attorney, or other instrument so recorded, shall be deemed to be revoked by any act of the party by whom it was executed unless the instrument containing such revocation be also recorded in the same office in which the instrument containing the power was recorded.

Laws Oreg., Jan. 13, 1854; Hill's Ann. Laws, s. 3036.

Sec. 108. **Deeds heretofore made, etc.** All conveyances of real property heretofore made and acknowledged or proved in accordance with the laws of the district in force at the time of such making and acknowledgment of proof shall have the same force as evidence, and be recorded in the same manner and

with like effect as conveyances executed and acknowledged in pursuance of the provisions of this chapter.

Laws Oreg., Jan. 13, 1854; Hill's Ann. Laws, s. 3037.

Sec. 109. **Patents, decrees, etc., affecting land may be recorded.** Patents from the United States for lands within the district, notices of pending actions affecting title to real estate, judgments of courts in the district requiring the execution of a conveyance of real estate within the district, and approved lists of lands granted to the district or to corporations in the district, and conveyances executed by any officer of the district by authority of law of lands within said district, shall be entitled to be recorded in the office of the commissioner of the precinct in which the lands lie in like manner and with like effect as conveyances of land duly acknowledged, proved, or certified.

Laws Oreg., Oct. 15, 1872; Hill's Ann. Laws, s. 3038; 14 Oreg., 149; 19 ibid., 287.

Sec. 110. **Record of such instrument.** The record of any such patent, notice of pending action, judgment, approved lists, or deeds duly recorded, or a transcript thereof duly certified by the commissioner in whose office the same may have been recorded, may be read in evidence in any court in the district with like force and effect as the original thereof.

Laws Oreg., Oct. 15, 1872; Hill's Ann. Laws, s. 3039.

Sec. 111. **Defective acknowledgments cured.** All defective and informal acknowledgments of deeds, powers of attorney, mortgages, or other instruments for the conveyance of land, or any interest therein, heretofore made by any person or persons in good faith, whether the acknowledgments were taken by or before any clerk, deputy clerk, or judge of any court of record within the district, or any commissioner or notary public of the district, shall be, and the same are hereby, legalized.

Laws Oreg., Oct. 20, 1876; Hill's Ann. Laws, s. 3040.

Sec. 112. **Exceptions.** This chapter is not intended to interfere with vested rights in lands or premises, arising by adverse title, acquired in good faith since the date of such defective acknowledgments.

Laws Oreg., Oct. 20, 1876; Hill's Ann. Laws, s. 3041.

Sec. 113. **Other defective deeds cured.** All deeds to real property heretofore executed in the district which shall have been signed by the grantors in due form shall be sufficient in law to convey the legal title to the premises therein described from the grantors to the grantees without any other execution or acknowledgment whatever; and such deeds so executed shall be received in evidence in all courts in the district and be conclusive evidence of the title to the lands therein described against the grantors, their heirs and assigns.

Laws Oreg., Oct. 19, 1878; Hill's Ann. Laws, s. 3042; 12 Oreg., 16; 15 ibid., 508, 509.

Sec. 114. **Judicial sales.** All judicial sales of real property heretofore made in the district on proceedings to satisfy valid judgments or decrees of any court, and the moneys bidden thereon paid to the officer making such sale, and such sale shall have been confirmed by an order of the proper court, such sale shall be valid and sufficient in law to sustain a deed based on such sale; and when no such deed has been executed, shall entitle such purchaser to such deed; and such deed, when executed, shall be sufficient to convey all the title of the judgment debtor in the premises so sold to the purchaser at the sale, and all defects and irregularities in the issuance of execution or the manner of making or conducting such sale shall be disregarded.

Laws Oreg., Oct. 19, 1878; Hill's Ann. Laws, s. 3043.

Sec. 115. **Defectively executed sales by executors and administrators.** All sales heretofore made by executors and administrators of their decedents' real property in the district to purchasers for a valuable consideration, which has been paid by such purchasers to such executors or administrators or their successors in good faith, and such sales shall not have been set aside by the court, but shall have been confirmed or acquiesced in by such court, shall be sufficient to sustain an executor's or administrator's deed to such purchaser for such real property; and in case such deed shall not have been given, shall entitle such purchaser to such deed; and such deed shall be sufficient to convey to such purchaser all the title that such decedent had in the real property; and all irregularities in obtaining the order of the court for such sale and all irregularities in making or conducting the same by such executor or administrator shall be disregarded.

Laws Oreg., Oct. 19, 1878; Hill's Ann. Laws, s. 3044; 19 Oreg., 203.

Sec. 116. **Record of such deeds receivable in evidence.** When such deeds so executed shall have been recorded in the records of deeds in the proper precinct, such record, duly certified by the commissioner, shall be evidence in all courts, and have the same effect as the original.

Laws Oreg., Oct. 19, 1878; Hill's Ann. Laws, s. 3045.

Sec. 117. **Defective execution of conveyances by executors; decree in such cases.** When any real estate has been heretofore or shall be hereafter sold by any executor or administrator, under or by virtue of any license or order of any commissioner in the district, and the sale shall have been approved by the commissioner, and the purchaser shall have paid the purchase money for the same, and the sale shall have been made in good faith, in order to provide for payment of the claims against the estate, and the executor or administrator shall have failed or neglected to make or execute any deed conveying such real estate to such purchaser, or if from mistake or omission in the deed, or defect in its execution, the same shall be inoperative, and the period of five years shall have elapsed after the making of such sale, then, in such case, all such sales shall be, and are hereby, confirmed and approved, notwithstanding any irregularities or informalities in the proceedings prior to the sale. And when such facts shall be made to appear in any action of an equitable nature brought to quiet title to such real property against the heirs or their assigns of the deceased person whose property shall have been thus sold, in the proper court for such suits, then such court shall make its decree quieting such title, and compelling and ordering conveyances of the same to be made to such purchaser, his heirs or assigns, as if a valid contract to convey the real property had been made by such deceased person in his lifetime; and no action shall be maintained by such heirs, or their heirs or assigns, to dispossess any such purchaser, his heirs or assigns, after the expiration of five years from any such sale.

Laws Oreg., Oct. 26, 1874; Hill's Ann. Laws, s. 3046.

Sec. 118. **Transcribing records for new precinct to have the effect of the original.** When a new precinct shall be organized in whole or in part from an organized precinct, or from territory attached to such organized precinct for judicial purposes, all the records of deeds or other instruments relating to real property in such new precinct may be transcribed into the proper books by the commissioner of such new precinct, which records, so transcribed, shall have the same effect in all respects as original records; and the commissioner shall be paid for transcribing the same such sum as the district court may deem just and reasonable.

Laws Oreg., Jan. 13, 1854; Hill's Ann. Laws, s. 3047.

CHAPTER TWELVE.

OF FRAUDULENT CONVEYANCES OF REAL PROPERTY.

Sec.
119. Void as to whom.
120. Qualifications of last section.
121. Conveyance with power of revocation.
122. Conveyances by one authorized to revoke former grants.
123. Same, when conveyance before power of revocation vested.

Sec. 119. **Void as to whom.** Every conveyance or interest in lands, or the rents or profits of lands, and every charge upon lands or upon the rents and profits thereof, made or created with the intent to defraud prior or subsequent purchasers for a valuable consideration of the same lands, rents, or profits as against such purchasers, shall be void.

Laws Oreg., Jan. 16, 1854; Hill's Ann. Laws, s. 3048.

Sec. 120. **Qualification of last section.** No such conveyance or charge shall be deemed fraudulent in favor of a subsequent purchaser who shall have actual or legal notice thereof at the time of his purchase, unless it shall appear that the grantee in such conveyance, or person to be benefited by such charge, was privy to the fraud intended.

Laws Oreg., Jan. 16, 1854; Hill's Ann. Laws, s. 3049.

Sec. 121. **Conveyance with power of revocation.** Every conveyance, or charge, of or upon any estate or interest in lands containing any provision for the revocation, determination, or alteration of such estate or interest, or any part thereof, at the will of the grantor, shall be void as against subsequent purchasers from such grantor for a valuable consideration of any estate or interest so liable to be revoked or determined, although the same be not expressly revoked, determined, or altered by such grantor by virtue of the power reserved or expressed in such prior conveyance or charge.

Laws Oreg., Jan. 16, 1854; Hill's Ann. Laws, s. 3050.

Sec. 122. **Conveyances by one authorized to revoke former grants.** Where a power to revoke the conveyance of any lands, or the rents and profits thereof, and to reconvey the same, shall be given to any person other than the grantor in such conveyance, and such person shall thereafter convey the same lands, rents, or profits to a purchaser for a valuable consideration, such subsequent conveyance shall be valid in the same manner and to the same extent as if the power of revocation were recited therein and the intent to revoke the former conveyance expressly declared.

Laws Oreg., Jan. 16, 1854; Hill's Ann. Laws, s. 3051.

Sec. 123. **Same, when conveyance before power of revocation vested.** If a conveyance to a purchaser under either of the last two preceding sections shall be made before the person making the same shall be entitled to execute his power of revocation, it shall nevertheless be valid from the time the power of revocation shall actually vest in such person, in the same manner and to the same extent as if then made.

Laws Oreg., Jan. 16, 1854; Hill's Ann. Laws, s. 3052.

CHAPTER THIRTEEN.

OF FRAUDULENT CONVEYANCES OF PERSONAL PROPERTY.

Sec.
124. What transfers void.
125. Filing of chattel mortgages.
126. Index of chattel mortgage.
127. Mortgage to become invalid at the end of one year, unless.
128. Affidavit may be renewed.
129. Copy in evidence, what it proves.

Sec. 124. **What transfers void.** All deeds of gift, all conveyances, and transfers of assignments, verbal or written, of goods and chattels or things in action, made in trust for the person making the same, shall be void as against the creditors, existing or subsequent, of such person.

Laws Oreg., Jan. 16, 1854; Hill's Ann. Laws, s. 3053.

Sec. 125. **Filing of chattel mortgages.** It shall be the duty of the commissioner, upon the presentation for that purpose of any mortgage or conveyance intended to operate as a mortgage of goods and chattels, or a copy of any such instrument, and the payment of his fees, to indorse thereon the time of receiving the same, and to deposit such instrument or copy in his office, to be kept for the inspection of all persons interested.

Laws Oreg., Jan. 16, 1854; Hill's Ann. Laws, s. 3054; 11 Oreg., 409.

Sec. 126. **Index of chattel mortgage.** Such commissioner shall enter in a book, to be provided by him for that purpose, the names of all the parties to such instrument, arranging the names of the mortgagors alphabetically, and shall note thereon the time of filing each instrument or copy.

Laws Oreg., Jan. 16, 1854; Hill's Ann. Laws, s. 3055.

Sec. 127. **Mortgage to become invalid at the end of the year, unless.** Every such mortgage shall cease to be valid as against the creditors of the person making the same, or subsequent purchasers or mortgagors in good faith, after the expiration of one year from the filing of the same, or a copy thereof, unless within thirty days next preceding the expiration of the year the mortgagee, his agent, or attorney shall make and annex to the instrument or copy on file, as aforesaid, an affidavit setting forth the interest which the mortgagee has, by virtue of such mortgage, in the property therein mentioned, upon which affidavit the commissioner shall indorse the time when the same was filed.

Laws Oreg., Jan. 16, 1854; Hill's Ann. Laws, s. 3056; 14 Oreg., 468.

Sec. 128. **Affidavit may be renewed.** The effect of any such affidavit shall not continue beyond one year from the time when such mortgage would otherwise cease to be valid as against the creditors of the person making such mortgage or subsequent purchasers or mortgagees in good faith; but within thirty days next preceding the time when any such mortgage would otherwise cease to be valid, as aforesaid, a similar affidavit may be filed and annexed, as provided in the preceding section and with like effect.

Laws Oreg., Jan. 16, 1854; Hill's Ann. Laws, s. 3057.

Sec. 129. **Copy in evidence; what it proves.** A copy of any such instrument, or a copy of any copy thereof so filed as aforesaid, including any affidavits annexed thereto in pursuance of this chapter, certified by the commissioner in whose office the same shall be filed, shall be received in evidence,

but only of the fact that such instrument, copy, or affidavit was received and filed according to the indorsement of the commissioner thereon, and of no other fact.

Laws Oreg., Jan. 16, 1854; Hill's Ann. Laws, s. 3058.

CHAPTER FOURTEEN.

OF GENERAL PROVISIONS CONCERNING FRAUDULENT CONVEYANCES AND CONTRACTS.

Sec.
130. Conveyance with intent to defraud creditors.
131. Grant of trust to be in writing.
132. What conveyances void against heirs.
133. Fraudulent intent a question of fact.
134. Purchaser when not affected.
135. Definition of lands, etc.
136. Definition of conveyances.

Sec. 130. **Conveyance with intent to defraud creditors.** Every conveyance or assignment in writing or otherwise of any estate or interest in lands, or in goods, or things in action, or of any rents or profits issuing thereform, and every charge upon lands, goods, or things in action, or upon the rents or profits thereof, made with the intent to hinder, delay, or defraud creditors or other persons of their lawful suits, damages, forfeitures, debts, or demands, and every bond or other evidence of debt given, action commenced, decree or judgment suffered, with the like intent, as against the persons so hindered, delayed, or defrauded, shall be void.

Laws Oreg., Jan. 16, 1854; Hill's Ann. Laws, s. 3059; 5 Oreg., 413; 12 id., 453; 15 id., 18; 16 id., 304, 316; Bradfeldt v. Cook, 27 Oreg., 194.

Sec. 131. **Grant of trust to be in writing.** Every grant or assignment of any existing trusts in lands, goods, or things in action, unless the same shall be in writing, subscribed by the party making the same, or by his agent, lawfully authorized, shall be void.

Laws Oreg., Jan. 16, 1854; Hill's Ann. Laws, s. 3060.

Sec. 132. **What conveyances void against heirs.** Every conveyance, charge, instrument, or proceeding declared by law to be void as against the creditors, purchasers, or mortgagees shall be equally void as against the heirs, successors, personal representatives, or assigns of such creditors, purchasers, or mortgagees.

Laws Oreg., Jan. 16, 1854; Hill's Ann. Laws, s. 3061.

Sec. 133. **Fraudulent intent a question of fact.** The question of fraudulent intent in all cases arising under the provisions of this code shall be deemed a question of fact and not of law.

Laws Oreg., Jan. 16, 1854; Hill's Ann. Laws, s. 3062.

Sec. 134. **Purchaser when not affected.** The provisions of chapters thirteen, fourteen, and fifteen of this title shall not be construed in any manner to affect or impair the title of a purchaser for a valuable consideration unless it shall appear that such purchaser had previous notice of the fraudulent intent of his immediate grantor, or of the fraud rendering void the title of such grantor.

Laws Oreg., Jan. 16, 1854; Hill's Ann. Laws, s. 3063; 15 Oreg., 10, 19; 16 id., 304.

Sec. 135. **Definition of lands, etc.** The term "lands" as used in chapters thirteen, fourteen and fifteen of this title shall be construed as coextensive in meaning with "lands, tenements, and hereditaments," and the term "estate and interest in lands" shall be construed to embrace every interest, freehold, and chattel, legal and equitable, present and future, vested and contingent in lands as above defined.

Laws Oreg., Jan. 16, 1854; Hill's Ann. Laws, s. 3064.

Sec. 136. **Definition of "conveyances."** The term "conveyance," as used in chapters thirteen, fourteen and fifteen of this title, shall be construed to embrace every instrument in writing except a last will and testament, whatever may be its form and by whatever name it may be known in law, by which any estate or interest in lands is created, aliened, assigned, or surrendered.

Laws Oreg., Jan. 16, 1854; Hill's Ann. Laws, s. 3065; 9 Oreg., 194.

CHAPTER FIFTEEN.

OF THE DISPOSITION OF PROPERTY BY WILL.

Sec.
137. Disposition of property by will.
138. Will, how executed.
139. When will revoked by marriage and birth of issue.
140. Marriage of woman revokes will.
141. Bond, etc., to convey property devised.
142. Charge or incumbrance upon property devised.
143. Children, etc., to have portion of estate.
144. Effect of advancement.
145. When issue of deceased devisee to take estate.
146. Canceling of second will, when to revive first.
147. Mariner or soldier may dispose of wages.
148. Nuncupative will.
149. Probate or nuncupative will.
150. Law of the place, when to govern and when not.
151. Copies of foreign wills.
152. Foreign will, how contested.
153. Devisee or legatee may prove.
154. When such witness to have share of estate.
155. If sufficient other witnesses, devisee may take.
156. Creditor may be witness.
157. Legatee, how made competent.
158. Deceased legatee, when deemed legal witness.
159. Legatee, when not entitled to legacy.
160. Estate for life, remainder in fee.
161. When fee passes.
162. Contribution among legatees.
163. Definition of will.
164. Construction of wills.
165. Life estate by will with remainder to heirs.
166. When will must be in writing.
167. How written will may be revoked or altered.

Sec. 137. **Disposition of property by will.** Every person of twenty-one years of age and upwards, of sound mind, may by last will devise all his or her property, real or personal, saving in the case of a married man to the widow her dower, and saving in the case of a married woman any rights which her husband may have as tenant by the curtesy.

Laws Oreg., Dec. 15, 1853; Hill's Ann. Laws, ss. 3066, 3067, 3068; 7 Oreg., 42; 5 id., 263.

Sec. 138. **Will, how executed.** Every will shall be in writing, signed by the testator, or by some other person under his direction, in his presence, and shall be attested by two or more competent witnesses, subscribing their names to the will in the presence of the testator.

Laws Oreg., Dec. 15, 1853; Hill's Ann. Laws, s. 3069; Poole v. Buffin, 3 Oreg., 438; Moreland v. Brady, 8 id., 303; 19 id., 126.

Sec. 139. **When will revoked by marriage and birth of issue.** If, after making a will disposing of the whole estate of the testator, such testator

shall marry and die, leaving issue by such marriage living at the time of his death, or shall leave issue of such marriage born to him after his death, such will shall be deemed revoked unless provision shall have been made for such issue by some settlement, or unless such issue shall be provided for in the will, and no evidence shall be received to rebut the presumption of such revocation.

Laws Oreg., Dec. 15, 1853; Hill's Ann. Laws, s. 3071.

Sec. 140. **Marriage of person revokes will.** A will made by an unmarried person shall be deemed revoked by his or her subsequent marriage.

Laws Oreg., Dec. 15, 1853; Hill's Ann. Laws, s. 3072.

Sec. 141. **Bond, etc., to convey property devised.** A bond, covenant, or agreement made for a valuable consideration by a testator, to convey any property devised or bequeathed in any last will previously made, shall not be deemed a revocation of such previous devise or bequest; but such property shall pass by the devise or bequest, subject to the same remedies on such bond, covenant, or agreement, for the specific performance or otherwise, against devisees or legatees, as might be had by law against the heirs of the testator, or his next of kin, if the same had descended to them.

Laws Oreg., Dec. 15, 1853; Hill's Ann. Laws, s. 3073.

Sec. 142. **Charge or incumbrance upon property devised.** A charge or incumbrance upon any real or personal estate for the purpose of securing the payment of money or the performance of any covenant or agreement shall not be deemed a revocation of any will relating to the same estate previously executed. The devises and legacies therein contained shall pass and take effect subject to such charge or incumbrance.

Laws Oreg., Dec. 15, 1853; Hill's Ann. Laws, s. 3074.

Sec. 143. **Children, etc., to have portion of estate.** If any person make his last will and die, leaving a child or children, or descendants of such child or children, in case of their death, not named or provided for in such will, although born after the making of such will, or the death of the testator, every such testator, so far as shall regard such child or children, or their descendants not provided for, shall be deemed to die intestate; and such child or children, or their descendants, shall be entitled to such proportion of the estate of the testator, real and personal, as if he had died intestate, and the same shall be assigned to them; and all the other heirs, devisees, and legatees shall refund their proportional part.

Laws Oreg., Dec. 15, 1853; Hill's Ann. Laws, s. 3075; Garish v. Garish, 8 Oreg., 351; 16 id., 186.

Sec. 144. **Effect of advancement.** If such child or children, or their descendants, shall have an equal proportion of the testator's estate bestowed on them in the testator's lifetime by way of advancement, they shall take nothing by virtue of the provisions of the preceding section.

Laws Oreg., Dec. 15, 1853; Hill's Ann. Laws, s. 3076.

Sec. 145. **When issue of deceased devisee to take estate.** When any estate shall be devised to any child or grandchild, or other relative of the testator, and such devisee shall die before the testator, leaving lineal descendants, such descendants shall take the estate, real and personal, as such devisee would have done in case he had survived the testator.

Laws Oreg., Dec. 15, 1853; Hill's Ann. Laws, s. 3077.

Sec. 146. **Canceling of second will when to revive the first.** If after making any will the testator shall duly make and execute a second will, the destruc-

tion, canceling, or revocation of such second will shall not revive the first will, unless it appear by the terms of such revocation that it was his intention to revive and give effect to the first will, or unless he shall duly republish his first will.

Laws Oreg., Dec. 15, 1853; Hill's Ann. Laws, s. 3078.

Sec. 147. **Mariner or soldier may dispose of wages.** Any mariner at sea, or soldier in the military service, may dispose of his wages or other personal property as he might have done by common law, or by reducing the same to writing.

Laws Oreg., Dec. 15, 1853; Hill's Ann. Laws, s. 3079.

Sec. 148. **Nuncupative will.** No proof shall be received of any nuncupative will unless it be offered within six months after speaking the testamentary words, nor unless the words, or the substance thereof, were reduced to writing within thirty days after they were spoken.

Laws Oreg., Dec. 15, 1853; Hill's Ann. Laws, s. 3080.

Sec. 149. **Probate of nuncupative will.** No probate of any nuncupative will shall be granted for fourteen days after the death of the testator, nor shall any nuncupative will be at any time proved, unless the testamentary words, or the substance thereof, be first committed to writing, and a citation issued, accompanied with a copy thereof, to call the widow or next of kin to the deceased that they may contest the will if they think proper.

Laws Oreg., Dec. 15, 1853; Hill's Ann. Laws, s. 3081.

Sec. 150. **Law of the place, when to govern and when not.** Any person not an inhabitant of, but owning property, real or personal, in the district may devise or bequeath such property by last will executed according to the laws in force in the district, State, or Territory in which the will may be executed.

Laws Oreg., Feb. 20, 1891; Hill's Ann. Laws, s. 3082.

Sec. 151. **Copies of foreign wills.** If such will be probated in any State, Territory, or other district of the United States, or in any foreign country or State, copies of such will and of the probate thereof, certified by the clerk of the court in which such will was probated, with the seal of the court affixed thereto, if there be a seal, together with a certificate of the chief judge or presiding magistrate, that the certificate is in due form, and made by the clerk or other person having the legal custody of the record, shall be recorded in the same manner as wills executed and proved in the district, and shall be admitted in evidence in the same manner and with like effect.

Laws Oreg., Feb. 20, 1891; Hill's Ann. Laws, s. 3083.

Sec. 152. **Foreign will, how contested.** Any such will may be contested and annulled within the same time and in the same manner as wills executed and proven in the district.

Laws Oreg., Feb. 20, 1891; Hill's Ann. Laws, s. 3084.

Sec. 153. **Devisee or legatee may prove.** If any person has attested or shall attest the execution of any will to whom any beneficial devise, legacy, estate, interest, gift, or appointment of or affecting real or personal estate other than or except charges in lands, tenements, or hereditaments for the payment of any debt or debts shall be thereby given or made, such devise, legacy, estate, gift, or appointment shall, so far only as concerns such person attesting the execution of such will or any person claiming under him, be void, and such person shall be admitted as a witness to the execution of such will.

Laws Oreg., Feb., 20, 1891; Hill's Ann. Laws, s. 3085.

Sec. 154. **When such witness to have share of estate.** If any such witness would be entitled to any share in the testator's estate in case the will should not be established, then so much of the estate as would have descended or would have been distributed to such witness shall be saved to him as will not exceed the value of the devise or bequest made to him in the will; and he may recover the same from the devisees or legatees named in the will in proportion to and out of the parts devised and bequeathed to him.

Laws Oreg., Feb. 20, 1891; Hill's Ann. Laws, s. 3086.

Sec. 155. **If sufficient other witnesses devise may be taken.** If the execution of such will be attested by a sufficient number of other competent witnesses, as required by this code, then such devise, legacy, interest, estate, gift, or appointment shall be valid.

Laws Oreg., Feb. 20, 1891; Hill's Ann. Laws, s. 3087.

Sec. 156. **Creditor may be witness.** If by any will any real estate be charged with any debt, and any creditor whose debt is so charged has attested the execution of such will, every such creditor shall be admitted as a witness to the execution of such will.

Laws Oreg., Feb. 20, 1891; Hill's Ann. Laws, s. 3088.

Sec. 157. **Legatee, how made competent.** If any person has attested or shall attest the execution of any will to whom any legacy or bequest is thereby given, and such person, before giving testimony concerning the execution of such will, shall have released such bequest or legacy and renounced without valuable consideration all benefits under said will, such person shall be admitted as a witness to the execution of such will.

Laws Oreg., Feb. 20, 1891; Hill's Ann. Laws, s. 3089; Hagan v. Wyman, 2 Oreg., 304.

Sec. 158. **Deceased legatee, when deemed legal witness.** If any legatee or devisee who has attested or shall attest the execution of any will shall have died or die in the lifetime of the testator, or before he shall have received or released the legacy or bequest so given to him, and before he shall have refused to receive such legacy or bequest on a tender made thereof, such legatee or devisee shall be deemed a legal witness to the execution of such will.

Laws Oreg., Feb. 20, 1891; Hill's Ann. Laws, s. 3091.

Sec. 159. **Legatee, when not entitled to legacy.** No person to whom any estate, gift, or appointment shall be given or made which is hereby declared to be null and void, or who shall have refused to receive such legacy or bequest on tender made, and who shall have been examined as a witness concerning the execution of such will, shall, after he shall have been so examined, demand or receive, except as provided in section one hundred and seventy-three, any profit or benefit of or from such estate, interest, gift, or appointment so given or made to him by any such will, or demand, receive, or accept from any person any such legacy or bequest, or any satisfaction or compensation for the same.

Laws Oreg., Feb., 20, 1891; Hill's Ann. Laws, s. 3092.

Sec. 160. **Estate for life, remainder in fee.** If any person by last will devise any real estate to any person for the term of such person's life, and after his death, to his or her children or heirs, or right heirs in fee, such devise shall vest an estate for life only in such devisee, and remainder in fee simple in such children.

Laws Oreg., Feb. 20, 1891; Hill's Ann. Laws, s. 3093; 11 Oreg., 153.

Sec. 161. **When fee passes.** A devise of real property shall be deemed and taken as a devise of all the estate or interest of the testator therein subject to

his disposal, unless it clearly appears from the will that he intended to devise a less estate or interest; and any estate or interest in real property acquired by anyone after the making of his or her will shall pass thereby, unless it clearly appear therefrom that such was not the intention of the testator; nor shall any conveyance or disposition of real property by anyone after the making of his or her will prevent or affect the operation of such will upon any estate or interest therein subject to the disposal of the testator at his or her death.

Laws Oreg., Feb. 20, 1891; Hill's Ann. Laws, s 3094.

Sec. 162. **Contribution among legatees.** When any testator in his last will shall give any chattel or real estate to any person, and the same shall be taken in execution for the payment of the testator's debts, then all the other legatees, devisees, and heirs shall refund their proportional part of such loss to such person from whom the bequest shall be taken.

Laws Oreg., Dec. 15, 1853; Hill's Ann. Laws, s. 3095.

Sec. 163. **Definition of will.** The term "will," as used in this chapter, shall be so construed as to include all codicils as well as wills.

Laws Oreg., Dec. 15, 1853; Hill's Ann. Laws, s. 3096.

Sec. 164. **Construction of wills.** All courts and others concerned in the execution of last wills shall have due regard to the directions of the will, and the true intent and meaning of the testator in all matters brought before them.

Laws Oreg., Dec. 15, 1853; Hill's Ann. Laws, s. 3097; 17 Oreg., 20.

Sec. 165. **Life estate by will with remainder to heirs.** Where any estate, real or personal is given by deed or will to any person for his life, and after his death to his heirs, or to the heirs of his body, the conveyance shall be construed to vest an estate for his life only in such person, and a remainder in fee simple in his heirs or the heirs of his body.

Sec. 166. **When will must be in writing.** A last will and testament, except when made by a soldier in actual military service or by a mariner at sea, is invalid unless it be in writing and executed with such formalities as are required by law.

Sec. 167. **How written will may be revoked or altered.** A written will can not be revoked or altered otherwise than by another written will, or another writing of the testator, declaring such revocation or alteration, and executed with the same formalities required by law for the will itself; or unless the will be burnt, torn, canceled, obliterated, or destroyed with the intent and for the purpose of revoking the same by the testator himself, or by another person in his presence, by his direction and consent; and when so done by another person the direction and consent of the testator, and the fact of such injury or destruction shall be proved by at least two witnesses.

CHAPTER SIXTEEN.

OF THE DESCENT OF REAL PROPERTY.

Sec.
168. Real property, to whom it descends.

Sec. 168. **Real property, descent of.** When any person shall die seized of any real property, or any right thereto, or entitled to any interest therein in

fee simple or for the life of another, not having lawfully devised the same, such real property shall descend, subject to his debts, as follows:

(1) **Lineal descendants, when to take.** In equal shares to his or her children and to the issue of any deceased child by right of representation; and if there be no child of the intestate living at the time of his or her death, such real property shall descend to all his or her other lineal descendants; and if all such descendants are in the same degree of kindred to the intestate, they shall take such real property equally; or otherwise, they shall take according to the right of representation.

(2) **Wife or father, when to take.** If the intestate shall leave no lineal descendants, such real property shall descend to his wife, or if the intestate be a married woman and leave no lineal descendants, then such real property shall descend to her husband; and if the intestate leave no wife nor husband, then such real property shall descend to his or her father.

(3) **Brothers, sisters, or mother, when to take.** If the intestate shall leave no lineal descendants, neither husband nor wife, nor father, such real property shall descend in equal shares to the brothers and sisters of the intestate, and to the issue of any deceased brother or sister by right of representation; but if the intestate shall leave a mother also, she shall take an equal share with such brothers and sisters.

(4) **Mother, when to take exclusively.** If the intestate shall leave no lineal descendants, neither husband nor wife, nor father, brother, nor sister, living at his or her death, such real property shall descend to his mother, to the exclusion of the issue of the deceased brothers or sisters of the intestate.

(5) **Next of kin, when to take.** If the intestate shall leave no lineal descendants, neither husband nor wife, nor father, mother, brother, nor sister, such real property shall descend to his or her next of kin in equal degree, excepting that when there are two or more collateral kindred in equal degree, but claiming through different ancestors, those who claim through the nearest ancestor shall be preferred to those claiming through a more remote ancestor.

(6) **Issue of the intestate and their lineal descendants, who may inherit from each other.** If the intestate shall leave one or more children, and the issue of one or more deceased children, and any of such surviving children shall die under age without having been married, all such real property that came to such deceased child by inheritance from such intestate shall descend in equal shares to the other children of such intestate, and to the issue of any other children of such intestate who shall have died, by right of representation. But if all the other children of such intestate shall be also dead, and any of them shall have left issue, such real property so inherited by such deceased child shall descend to all the issue of such other children of the intestate in equal shares, if they are in the same degree of kindred to such deceased child; otherwise they shall take by right of representation.

(7) **When real property to escheat.** If the intestate shall leave no lineal descendants or kindred, such real property shall escheat to the United States.

Laws Oreg., Oct. 25, 1889; Hill's Ann. Laws, s. 3093; Jenkins v. Hall, 26 Oreg., 79.

CHAPTER SEVENTEEN.

OF THE DISTRIBUTION OF PERSONAL PROPERTY.

Sec.
169. Distribution of personal property.
Sec.
170. Advancement to widow.

Sec. 169. **Distribution of personal property.** When any person shall die possessed of any personal property, or of any right to or interest therein, not having lawfully bequeathed the same, such personal property shall be applied and distributed as follows:

(1) **Provision for widow and family.** If the intestate shall leave a widow, she shall be allowed all articles of her apparel and ornament, according to the degree and estate of the intestate, and such property and provisions for the use and support of herself and minor children as shall be allowed and ordered in pursuance of chapter eighty-three of the Code of Civil Procedure; and this allowance shall be made as well when the widow waives the provision made for her in the will of her husband as when he dies intestate.

(2) **Payment of debts.** The personal property of the intestate remaining after such allowance shall be applied to the payment of the debts of the deceased and the charges and expenses of administration as provided by law.

(3) **Distribution of residue.** The residue, if any, of the personal property shall be distributed among the persons who would be entitled to the real property of the intestate, as provided in this code, and in the like proportion or share, except as herein otherwise provided.

(4) **Husband entitled to the whole.** If the intestate shall leave a husband and issue, such husband shall be entitled to receive one-half of such residue of the personal property; but if the intestate leave a husband and no issue, such husband shall receive the whole of such residue of personal property.

(5) **Widow's share of residue.** If the intestate leave a widow and issue, such widow shall be entitled to receive one-half of such residue of the personal property; but if the intestate leave a widow and no issue, such widow shall be entitled to receive the whole of such residue of the personal property.

(6) **When to escheat.** If there be no husband, widow, or kindred of the intestate, the whole of such residue shall escheat to the United States.

Laws Oreg., Oct. 24, 1864; Hill's Ann. Laws, s. 3099.

Sec. 170. **Advancement to widow.** If the intestate leave a widow and issue, and any of such issue shall have received an advancement from the intestate in his lifetime, the value of such advancement shall not be taken into consideration in computing the part to be given to the widow, but such widow shall only be entitled to receive the one-half of the personal property owned by the husband at the time of his death.

Laws Oreg., Oct. 24, 1864; Hill's Ann. Laws, s. 3100.

CHAPTER EIGHTEEN.

OF MISCELLANEOUS PROVISIONS CONCERNING THE DESCENT AND DISTRIBUTION OF PROPERTY.

Sec.
171. Status of illegitimate children.
172. Mother-heir to illegitimate child; effect of marriage of parents.
173. Degrees of kindred, how computed.
174. Advancement to issue.
175. When advancement greater or less than share.
176. Rule for computing value of advancement, etc.
177. Grants and gifts to heir.
178. When value of advancement expressed.
179. Advancement to heirs.
180. Estates by courtesy and dower not affected.
181. Certain terms defined. Posthumous children.

Sec. 171. **Status of illegitimate children.** An illegitimate child shall be considered an heir of its mother, and shall inherit or receive her property, real or personal, in whole or in part, as the case may be, in like manner as if such child had been born in lawful wedlock; but such child shall not be entitled to inherit or receive, as representing his mother, any property, real or personal, of the kindred, either lineal or collateral, of such mother: Provided, When the parents of such child have formally married such child shall not be regarded as illegitimate within the meaning of this code, although such formal marriage shall be adjudged to be void.

Laws Oreg., Feb. 25, 1889; Hill's Ann. Laws, s. 3101.

Sec. 172. **Mother heir to illegitimate child; effect of marriage of parents.** If an illegitimate child shall die intestate, without leaving a widow, husband, or lawful issue, the property, real and personal, of such intestate shall descend to or be received by the mother; but if after the birth of an illegitimate child the parents thereof shall intermarry, such child shall be considered legitimate to all intents and purposes.

Laws Oreg., Oct. 24, 1864; Hill's Ann. Laws, s. 3102.

Sec. 173. **Degrees of kindred, how computed.** The degrees of kindred shall be computed according to the rules of the civil law; and the kindred of the half blood shall inherit or receive equally with those of the whole blood in the same degree.

Laws Oreg., Oct. 24, 1864; Hill's Ann. Laws, s. 3103; 18 Oreg., 369.

Sec. 174. **Advancement of issue.** Any property, real or personal, that may have been given by the intestate in his lifetime as an advancement to any child or other lineal descendant shall be considered a part of the intestate's estate, so far as regards the division and distribution thereof among his issue, and shall be taken by such child or other descendant towards his share of the intestate's estate.

Laws Oreg., Oct. 24, 1864; Hill's Ann. Laws, s. 3104.

Sec. 175. **When advancement greater or less than share.** If the amount of such advancement shall exceed the share of the heir so advanced, such heir shall be excluded from any further share or portion in the division or distribution of the estate, but shall not be required to refund any part of such advancement; and if the amount so received shall be less than his share, such heir shall be entitled to so much more as will give him his full share or portion of the estate of the intestate.

Laws Oreg., Oct. 24, 1864; Hill's Ann. Laws, s. 3105.

Sec. 176. **Rule for computing value of advancement, etc.** If any such advancement is made in real property the value thereof shall, for the purposes of the last section, be considered as part of the real property to be divided; and if the advancement be either in real or personal property, and shall in either case not exceed the share or portion of such real or personal property that would come to the heir so advanced, such heir shall not refund any part of it, but shall take or receive so much less out of the whole part of the estate, as the case may be, as will make the whole share equal to those of the other heirs who are in the same degree with the heir so advanced.

Laws Oreg., Oct. 24, 1864; Hill's Ann. Laws, s. 3106.

Sec. 177. **Grants and gifts to heir.** All grants and gifts shall be deemed to be made in advancement if so expressed in the grant or gift, or if so charged, in writing, by the intestate, or acknowledged, in writing, to be so made by the child or other descendant to whom it is made, and not otherwise.

Laws Oreg., Oct. 24, 1864; Hill's Ann. Laws, s. 3107.

Sec. 178. **When value of advancement expressed.** If the value of the property, real or personal, so advanced be expressed in the conveyance or writing whereby the same is granted or given, or in the charge thereof made by the intestate, or in the acknowledgment made by the party receiving it, in the division and distribution of the estate, such advancement shall be considered of the value so expressed; otherwise, it shall be estimated at its value when granted or given.

Laws Oreg., Oct. 24, 1864; Hill's Ann. Laws, s. 3108.

Sec. 179. **Advancement to heirs.** If any child or lineal descendant to whom an advancement is made shall die before the intestate, leaving issue, such advancement shall be deemed made to such issue, and the division and distribution of the estate shall be made accordingly.

Laws Oreg., Oct. 24, 1864; Hill's Ann. Laws, s. 3109.

Sec. 180. **Estates by curtesy and dower not affected.** Nothing contained in this chapter shall affect or impair the estate of a husband as tenant by the curtesy, nor that of a widow as tenant in dower.

Laws Oreg., Oct. 24, 1864; Hill's Ann. Laws, s. 3110.

Sec. 181. **Certain terms defined. Posthumous children.** The word "issue," as used in this chapter, includes all the lawful lineal descendants of the ancestor; and the term "real property" includes all lands, tenements, and hereditaments, and rights thereto, and all interests therein, whether in fee simple or for the life of another. The term "personal property" includes all goods and chattels, moneys, credits, and effects of whatever nature not included in the term "real property." Inheritance "by right of representation" takes place when the lineal descendant of any deceased heir takes the same share or portion of the estate of an intestate that the parent of such descendant would have taken if living. For the purposes of this code, a posthumous child is to be deemed living at the death of its parent.

Laws Oreg., Oct. 24, 1864; Hill's Ann. Laws, s. 3111; Edwards v. Perkins, 7 Oreg., 155; 5 Oreg., 468.

CHAPTER NINETEEN.

OF ESCHEATS.

Sec.
182. When property escheats.
183. Proceedings to obtain possession.
184. Governor must take steps to recover.
185. Court may appoint receiver.
186. All persons claiming interest may defend.
187. Persons may claim proceeds, when; proceedings thereon.
188. Proceedings in case of personal property.
189. Escheated property held by bank.

Sec. 182. **When property escheats.** When any person shall die without heirs, leaving any real or personal property in the district, the same shall escheat to and become the property of the United States.

Laws Oreg., Feb. 21, 1887; Hill's Ann. Laws, s. 3135.

Sec. 183. **Proceedings to obtain possession.** The United States may maintain any action or proceeding necessary to recover the possession of any such property, or for the enforcement or protection of its rights thereto or on account thereof, in like manner and with like effect as any natural person. Such action or proceeding shall be prosecuted by the United States attorney, by the leave and under the direction of the governor of the district, and not otherwise.

Laws Oreg., Feb. 21, 1887; Hill's Ann. Laws, s. 3136.

Sec. 184. **Governor must take steps to recover.** When the governor is informed or has reason to believe that any real or personal property has escheated to the United States, he shall direct the United States attorney to file an information in behalf and in the name of the United States in the district court, setting forth a description of the estate, the name of the person last seized, the name of the occupant or the person in possession and claiming such estate, if known, and the facts and circumstances in consequence of which the estate is claimed to have been escheated, with an allegation that by reason thereof the United States has right by law to such estate. Upon such information a summons must issue to such person, requiring him to appear and answer the information within the time allowed by law in civil actions, and the court must make an order setting forth briefly the contents of the information and requiring all persons interested in the estate to appear and show cause, if any they have, within such time as the court making such order may fix, why the title should not vest in the United States, which order must be published for at least six consecutive weeks from the date thereof, in a newspaper published in the precinct, if one be published therein, and in case no newspaper is published in the precinct then in such newspaper in the district as the court by order may direct.

Laws Oreg., Feb. 21, 1887; Hill's Ann. Laws, s. 3137.

Sec. 185. **Court may appoint receiver.** The court, upon the information being filed, with and upon the application of the United States attorney, either before or after answer, upon notice to the party claiming such estate, if known, may, upon sufficient cause therefor being shown, appoint a receiver to take charge of such estate, and receive the rents and profits of the same, until the title to such estate is finally settled.

Laws Oreg., Feb. 21, 1887; Hill's Ann. Laws, s. 3138.

Sec. 186. **All persons claiming interest may defend.** All persons named in the information may appear and answer, and may traverse or deny the facts

stated in the information, the title of the United States to lands and tenements therein mentioned at any time before the time for answering expires; and any other person claiming an interest in such estate may appear and be made a defendant by motion for that purpose in open court within the time allowed for answering; and if no person appears and answers within the time, then judgment must be rendered that the United States be seized of the lands and tenements in such information claimed. But if any person appears and denies the title set up by the United States, or traverses any material fact set forth in the information, the issue of the fact must be tried as issues of facts are tried in civil actions. If, after the issues are tried, it appears from the facts found that the United States has good title to the estate in the information mentioned, or any part thereof, judgment must be rendered that the United States be seized thereof, and recover costs of action against the defendant. In any judgment rendered, or that has heretofore been rendered, by any court of competent jurisdiction, escheating real property to the United States, on motion of the United States attorney, the court shall make an order that the real property be sold by the marshal at public sale, and upon such terms, whether for cash or credit, or both, as shall be deemed for the best interests of the United States. And if such court shall deem it most advantageous for the United States, it may direct that the lands be surveyed into lots and sold in specific portions, upon such terms as to payments therefor as may be deemed best for the United States. After giving such notice of the time and place of sale as may be prescribed by the court in the order, the marshal shall, within ten days after such sale, make a report thereof to the court, and, upon hearing the report, the court may examine the same and witnesses in relation thereto, and if the proceedings of such sale are unfair, or the sum or sums bid are disproportionate to the value of the portion sold, and if it appear that a greater sum can be obtained for the property, or any portion thereof, exceeding such bid at least ten per centum, exclusive of the expense of a new sale, the court may vacate the sale and direct another sale to be had, and the new sale shall be conducted in all respects as if no previous sale had taken place. But if it appears to the court that the sale was legally made and fairly conducted, and that the sum bid is not disproportionate to the value of the property sold, and that a greater sum than ten per centum, exclusive of the expense of a new sale, can not be obtained, the court must make an order confirming the sale and directing the marshal in the name of the United States to execute to the purchaser or purchasers a conveyance of the property sold; and the conveyance shall vest in the purchaser or purchasers all the right and title of the United States therein; and also directing that the purchaser or purchasers shall execute and deliver to the marshal his or their note or notes, payable to the United States for the deferred payments with a first mortgage upon the property conveyed, to secure the deferred payments. And the marshal shall, out of the proceeds of such sale, pay the cost of the proceedings incurred on behalf of the United States, including the expense of making such sale, and the remainder, together with the notes and mortgages, he shall deliver to the United States attorney, taking his receipt therefor, and the United States attorney shall deposit the sum with the clerk of the district court, who shall pay the same into the Treasury of the United States in the manner provided by law for other moneys recovered in actions by the United States.

Laws Oreg., Feb. 21, 1887; Hill's Ann. Laws, s. 3139.

Sec. 187. **Persons may claim proceeds when; proceedings thereon.** Within ten years after judgment in any proceeding had under this chapter, a person not a party or privy to such proceeding may file a petition in the dis-

trict court showing his claim or right to the property or the proceeds thereof. A copy of such petition must be served upon the United States attorney at least twenty days before the hearing of the petition, who must answer the same; and the court thereupon must try the issue as issues are tried in civil actions, and if it be determined that such person is entitled to the property or the proceeds thereof, it must order the property, if it has not been sold, to be delivered to him, or if it has been sold and the proceeds paid into the Treasury of the United States, then it must order that a copy of the judgment be forwarded to the Secretary of the Treasury. All persons who fail to appear and file their petition within the time limited by law are forever barred, saving, however, to infants and persons of unsound mind, the right to appear and file their petitions at any time within the time limited, or one year after their respective disabilities cease.

Laws Oreg., Feb. 21, 1887; Hill's Ann. Laws, s. 3141; 19 Oreg., 505.

Sec. 188. **Proceedings in case of personal property.** In all cases of personal estate, the court shall direct by order that the same be sold by the marshal, as upon execution, and the proceeds be applied to the payment of the costs incurred by the United States and the costs and charges of making such sale, and the residue to the district attorney, who shall pay the same to the clerk of the court as hereinbefore provided.

Laws Oreg., Feb. 21, 1887; Hill's Ann. Laws, s. 3142.

Sec. 189. **Escheated property held by bank.** When the governor is informed or has reason to believe that any bank, banker, or banking institution in the district now has or holds on deposit or otherwise any fund, funds, or other property of any kind or nature which has escheated to the district (United States), he shall direct the United States attorney to file in the district court an information or bill of discovery, with proper interrogatories to be answered by the owner, agent, or manager of such bank or banking institution, and upon the filing of such information or bill the court shall order and direct, at a time to be designated in the bill, that the owner, agent, or manager of such bank or banking institution shall, under oath, file an answer to the information and interrogatories, and shall specially answer each and every interrogatory contained in such information or bill. If it appears to the court from such answer that the bank, banker, or banking institution has any property in its possession which has or may escheat to the United States, it shall direct the bank, banker, or banking institution forthwith to bring the same into such court, and the court shall proceed to dispose of the property as provided elsewhere in this chapter.

Laws Oreg., Feb. 21, 1887; Hill's Ann. Laws, s. 3143.

CHAPTER TWENTY.

OF PROMISSORY NOTES AND BILLS OF EXCHANGE.

Sec.
190. Promissory notes in writing payable to bearer, effect of.
191. Action by payees, indorsees, and holders, nature and extent of.
192. Note to the order of maker or fictitious person, effect of.
193. Grace, when allowed.
194. Qualification of last section.
195. Acceptance to be in writing.
196. Damages on foreign bills.
197. Damages on inland bills of exchange.

Sec. 190. **Promissory notes in writing payable to bearer, effect of.** All notes in writing, made and signed by any person, whereby he shall promise to pay to

any other person or his order, or unto the bearer, any sum of money therein mentioned, shall be due and payable as therein expressed, and shall have the same effect, and be negotiable in like manner, as inland bills of exchange, according to the custom of merchants.

Laws Oreg., Jan. 18, 1854; Hill's Ann. Laws, s. 3188; Wilson v. Wilson, 26 Oreg., 315.

Sec. 191. **Action by payees, indorsees, and holders, nature and extent of.** The payee and indorsee of every such note payable to them or their orders, and the holder of every such note payable to bearer, may maintain an action for the sum of money therein mentioned, in like manner as in case of an inland bill of exchange, and not otherwise.

Laws Oreg., Jan. 18, 1854; Hill's Ann. Laws, s. 3190; Wilson v. Wilson, supra.

Sec. 192. **Note to the order of maker or fictitious person, effect of.** Such notes made payable to the order of the maker thereof, or to the order of a fictitious person, shall, if negotiated by the maker, have the same effect and be of the same validity, as against the maker and all persons having knowledge of the facts, as if payable to bearer.

Laws Oreg., Jan. 18, 1854; Hill's Ann. Laws, s. 3191; 16 Oreg., 86.

Sec. 193. **Grace, when allowed.** On all bills of exchange payable at a future day certain within the district, and on all negotiable promissory notes, orders, and drafts payable at a future day certain within the district, in which there is not an express stipulation to the contrary, grace shall be allowed, except as provided in the following section, in like manner as it is allowed by the custom of merchants on foreign bills of exchange payable at the expiration of a certain period after date or after sight.

Laws Oreg., Feb. 20, 1885; Hill's Ann. Laws, s. 3192; McMullen v. Abbott, 1 Oreg., 258.

Sec. 194. **Qualification of last section.** The provisions of the preceding section shall not extend to any bill of exchange, note, or draft payable at sight or on demand.

Laws Oreg., Feb. 20, 1885; Hill's Ann. Laws, s. 3193.

Sec. 195. **Acceptance to be in writing.** No person within the district shall be charged as an acceptor of a bill of exchange unless his acceptance shall be in writing, signed by himself or his lawful agent.

Laws Oreg., Jan. 18, 1854; Hill's Ann. Laws, s. 3194; Allen v. Leavens, 26 Oreg., 169.

Sec. 196. **Damages on foreign bills.** Whenever any bill of exchange drawn or indorsed within the district and payable without the limits of the United States shall be duly protested for nonacceptance or nonpayment, the party liable for the contents of such bill shall, on due notice and demand thereof, pay the same at the current rate of exchange at the time of demand, and damages at the rate of ten per centum upon the contents thereof, together with interest on the contents, to be computed from the date of the protest; and the amount of contents, damages, and interest shall be in full of all damages, charges, and expenses.

Laws Oreg., Jan. 18, 1854; Hill's Ann. Laws, s. 3195.

Sec. 197. **Damages on inland bills of exchange.** If any bill of exchange drawn upon any person, firm, or body corporate out of the district, but within some State or Territory of the United States, for the payment of money, shall be duly presented for acceptance or payment and protested for nonacceptance or nonpayment, the drawer or indorser thereof, due notice being given of such nonacceptance or nonpayment, shall pay the bill, with legal interest, according

to its tenor, and five per centum damages, together with costs and charges of protest.

Laws Oreg., Jan. 18, 1854; Hill's Ann. Laws, s. 3196.

CHAPTER TWENTY-ONE.

INCORPORATION OF TOWNS.

Sec.
198. Filing petition.
199. Electors and their qualifications.
200. Election board and canvass of votes.
201. Powers of town council.
202. Officers.
203. Treasurer, bond and qualifications.

Sec. 198. **Filing petition.** Any community having three hundred permanent inhabitants may incorporate as provided in this Act. A petition shall first be presented to the judge of the United States district court presiding over the division wherein the community is located, signed by at least sixty bona fide residents of such community, which petition shall set forth the boundaries of the proposed corporation, and state the number of inhabitants therein, and such other facts as the court may require. The judge, by an order, shall prescribe the time and manner of giving notice of such incorporation. Such notice having been given, the court shall hear objections to the incorporation made by interested parties, and, if satisfied that the public interests require the incorporation, by order, may make changes in the boundaries, and shall set forth the name thereof and give due notice of an election for the purpose of determining whether the same shall be incorporated. At such election the qualified electors of the community may elect a common council of seven members, who shall have the qualifications of electors, such election to be under the control of a board of election composed of three bona fide residents and property owners in the corporation, to be appointed by the court or judge.

Sec. 199. **Electors and their qualifications.** The qualification of an elector for the first and all subsequent municipal elections shall be as follows: He shall be a male citizen of the United States or one who has declared his intention to become such, and of the age of twenty-one years, and shall have been a bona fide resident of Alaska for one year and of the proposed corporation for six months next prior to the date of election, or any subsequent one: Provided, There shall be added to the foregoing qualification in any election to determine whether or not a community shall incorporate the following qualification: Every elector shall be the owner of substantial property interests in the corporation.

Sec. 200. **Election board and canvass of votes.** The election board shall canvass the votes cast, and if a two-thirds majority are for incorporation they shall declare the community duly incorporated under the name and style of ———, and shall declare the seven persons receiving the highest number of votes duly elected councilmen of the corporation. The board shall file a certified copy of the order with the clerk of the district court, the secretary of the district, and the commissioner residing in the corporation. After filing such orders the corporation shall be deemed complete and the councilmen shall, after duly qualifying before the United States commissioner residing in the corporation, enter upon the duties of their office, and shall hold the same for one year or until their successors shall be elected and qualified.

Sec. 201. **Powers of town council.** The council shall have the following powers:

First. To provide suitable rules governing their own body, and to elect one of their members president, who shall be ex officio mayor.

Second. They may appoint, and at their pleasure remove, a clerk, treasurer, assessor, and such other officers as they deem necessary.

Third. To make rules for all municipal elections: Provided, No officer shall be elected for a longer term than one year.

Fourth. By ordinance to provide for necessary street improvements, fire protection, water supply, lights, wharfage, sewerage, maintenance of public schools, protection of public health, police protection, and the expense of assessment and collection of taxes.

Fifth. To impose and collect a poll tax on electors, tax on dogs, a general tax on real and personal property, possessory rights and improvements, and such license tax on business conducted within the corporate limits as the council may deem reasonable: Provided, No such tax shall exceed one per centum on the assessed valuation of property, and all assessments made by the corporation assessor shall be subject to review by the council, and appeals may be taken from their decisions to the district court: Provided further, No bonded indebtedness whatever shall be authorized for any purpose.

Sec. 202. **Officers.** In addition to the officers heretofore provided by this Act, there shall be elected a school board of three directors, who shall have the exclusive supervision, management, and control of the public schools and school property within said corporation, and shall be elected in the same manner and for the same term as the council.

Sec. 203. **Treasurer, bond and qualifications.** The treasurer of the corporation shall be ex officio treasurer of the school board, and shall, before entering upon the duties of his office, take the oath prescribed by law and execute bonds to the corporation in an amount to be determined by the judge of the district court, which bond shall be approved by the council and the judge of the district court and filed in the office of the recorder of the corporation, and he shall give such additional bond as the council or judge of the district court may from time to time direct, but in no event shall such bonds be less than twice the amount of money in the hands of the treasurer at any one time, to be determined by the tax rolls and license books of the corporation, of the corporation clerk, and the clerk of the district court: Provided, That fifty per cent of all license moneys provided for by Act of Congress approved March third, eighteen hundred and ninety-nine, entitled "An Act to define and punish crimes in the district of Alaska and to provide a code of criminal procedure for said district," and any amendments made thereto, required to be paid by any resident, person, or corporation for business carried on within said corporation, shall be paid over by the clerk of the United States district court receiving the same to the treasurer of said corporation, upon taking his receipt therefor in duplicate, one of which duplicate receipts shall be forwarded to the Secretary of the Treasury of the United States by the clerk as a voucher in lieu of cash, and the other receipt shall be retained by the clerk. The money received by the treasurer of the corporation shall be used, under the direction of the council, for school purposes.

CHAPTER TWENTY-TWO.

OF EMINENT DOMAIN.

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204. Purposes for which it may be exercised.
205. What estates in land may be acquired by condemnation.
206. Private property defined; classes enumerated.
207. Facts necessary to be found before condemnation.
208. Parties may make location and enter to make surveys.
209. Jurisdiction of the district court.
210. The complaint and its contents.
211. Summons, what to contain; how issued and served.
212. Who may defend.
213. Appointment of commissioners, etc.
214. Meeting of commissioners.
215. Date with respect to which compensation shall be assessed, and measure of damages.
216. Report of commissioners.
217. Appeal.
218. New proceedings to cure defective title.
219. Payment of damages.
220. To whom paid.
221. Final order of condemnation.
222. Putting plaintiff in possession.
223. Payment of costs.
224. Rules of practice.

Sec. 204. **Purposes for which it may be exercised.** Subject to the provisions of this chapter, the right of eminent domain may be exercised in behalf of the following public uses:

(1) All public uses authorized by the Government of the United States.

(2) Public buildings and grounds for the use of the district, and all other public uses authorized by Congress or other legislative authority of the district.

(3) Public buildings and grounds for the use of any precinct, city, town, village, school district, or other municipal division, whether incorporated or unincorporated; canals, aqueducts, flumes, ditches, or pipes conducting water, heat, or gas for the use of the inhabitants of any precinct, city, town, or other municipal division, whether incorporated or unincorporated; raising the banks of streams, removing obstructions therefrom, and widening, deepening, or straightening their channels; roads, streets, and alleys, and all other public uses for the benefit of any precinct, city, town, or other municipal division, whether incorporated or unincorporated, or the inhabitants thereof, which may be authorized by Congress or other legislative authority of the district.

(4) Wharves, docks, piers, chutes, booms, ferries, bridges of all kinds, private roads, plank and turnpike roads, railroads, canals, ditches, flumes, aqueducts, and pipes for public transportation, supplying mines and farming neighborhoods with water, and draining and reclaiming lands, and for floating logs and lumber on streams not navigable, and sites for reservoirs necessary for collecting and storing water.

(5) Roads, tunnels, ditches, flumes, pipes, and dumping places for working mines; also outlets, natural or otherwise, for the flow, deposit, or conduct of tailings or refuse matter from mines; also an occupancy in common by the owners or possessors of different mines of any place for the flow, deposit, or conduct of tailings or refuse matter from their several mines, and sites for reservoirs necessary for collecting and storing water.

(6) Private roads leading from highways to residences, mines, or farms.

(7) Telephone or electric-light lines.

(8) Telegraph lines.

(9) Sewerage of any precinct, city, town, village, or other municipal village, whether incorporated or unincorporated, or any subdivision thereof, or

of any settlement consisting of not less than ten families, or of any public buildings belonging to the district or to any college or university.

(10) Tramway lines.

(11) Electric power lines.

Mont. Code Civ. Proc., s. 2211; 7 Col., 113; 47 Cal., 539; 18 id., 229; 19 id., 47; 56 id., 595; 63 id., 73; 30 id., 437; 73 id., 482; 75 id., 642.

Sec. 205. **What estates in land may be acquired by condemnation.** That the following is a classification of the estates and rights in lands subject to be taken for public use:

(1) A fee simple, when taken for public buildings or grounds, or for permanent buildings, for reservoirs and dams, and permanent flooding occasioned thereby, or for an outlet for a flow, or a place for the deposit of débris or tailings of a mine.

(2) An easement when taken for any other use.

(3) The right of entry upon and occupation of lands, and the right to take therefrom such earth, gravel, stones, trees, and timber as may be necessary for some public use.

Mont. Code Civ. Proc., s. 2212; 19 Cal., 596; 56 id., 8; 62 id., 182; 6 Peters, 498.

Sec. 206. **Private property defined; classes enumerated.** The private property which may be taken under this chapter includes:

(1) All real property belonging to any person.

(2) Lands belonging to the district, or to any precinct, city, town, village, or other municipal division, whether incorporated or unincorporated, not appropriated to some public use.

(3) Property appropriated to public use; but such property must not be taken unless for a more necessary purpose than that to which it has already been appropriated.

(4) Franchises for roads, bridges, and ferries, and all other franchises; but such franchises must not be taken unless for free highways, free bridges, railroads, or other more necessary public use.

(5) All rights of way for any and all the purposes mentioned in section two hundred and four, and any and all structures and improvements thereon, and the lands held and used in connection therewith, must be subject to be connected with, crossed, or intersected by any other right of way or improvements or structures thereon. They must also be subject to a limited use, in common with the owner thereof, when necessary; but such uses, crossings, intersections, and connections must be made in manner most compatible with the greatest public benefit and least private injury.

(6) All classes of private property not enumerated may be taken for public use, when such taking is authorized by law.

Mont. Code Civ. Proc., s. 2213.

Sec. 207. **Facts necessary to be found before condemnation.** Before property can be taken it must appear:

(1) That the use to which it is to be applied is a use authorized by law.

(2) That the taking is necessary to such use.

(3) If already appropriated to some public use, that the public use to which it is to be applied is a more necessary public use.

The plaintiff or defendant or any party interested in the proceedings can appeal to the United States circuit court of appeals for the ninth circuit from any finding or judgment made or rendered under this chapter, as in other cases. Such appeal does not stay any further proceedings under this chapter.

Mont. Code Civ. Proc., s. 2214; 6 Mont., 416; 68 Cal., 57; 76 id., 404.

Sec. 208. **Parties may make location and enter to make surveys.** In all

cases where land is required for public use, the district, or its agents in charge of such use, may survey and locate the same; but it must be located in the manner which will be most compatible with the greatest public good and the least private injury, and subject to the provisions of section two hundred and thirteen. The district, or its agents in charge of such public use, may enter upon the land and make examination, surveys, and maps thereof, and such entry shall constitute no cause of action in favor of the owners of the land, except from injuries resulting from negligence, wantonness, or malice.

Mont. Code Civ. Proc., s. 2215.

Sec. 209. **Jurisdiction of the district court.** All proceedings under this chapter must be brought in the district court of the district. They must be commenced by filing a complaint and issuing a summons thereon.

Mont. Code Civ. Proc., s. 2216; 65 Cal., 394, 409; 74 Id., 261.

Sec. 210. **The complaint and its contents.** The complaint must contain:

(1) The name of the corporation, association, commission, or person in charge of the public use for which the property is sought, who must be styled plaintiff.

(2) The names of all owners and claimants of the property, if known, or a statement that they are unknown, who must be styled defendants.

(3) A statement of the right of the plaintiff.

(4) If a right of way be sought, the complaint must show the location, general route, and termini, and must be accompanied with a map thereof, so far as the same is involved in the action or proceeding.

(5) A description of each piece of land sought to be taken, and whether the same includes the whole or only a part of the entire parcel or tract. All parcels lying in the precinct and required for the same public use may be included in the same or separate proceedings, at the option of the plaintiff, but the court may consolidate or separate them to suit the convenience of parties. When application for the condemnation of a right of way for the purposes of sewerage is made on behalf of a precinct, town, or settlement, the chief executive officer of the same, or, if the same be unincorporated, any three citizens authorized thereunto by a written instrument, signed by not less than one-half of the whole number of male inhabitants of such precinct, town or settlement over the age of twenty-one years, which fact shall be set forth in the complaint, may be named as plaintiff.

Mont. Code Civ. Proc., s. 2217; 9 Saw., 62; 67 Cal., 59; 6 Mont., 114; 65 Cal., 283.

Sec. 211. **Summons, what to contain; how issued and served.** Upon the filing of such complaint a summons shall be issued, which shall contain the names of the parties, a description of the lands proposed to be taken, a statement of the public use for which it is sought, and a notice to the defendants to appear before the court or judge, at a time and place therein specified, and show cause why the property described should not be condemned, as prayed for in the complaint. Such summons shall, in other particulars, be in the form of a summons in a civil action, and shall be served in like manner upon each defendant named therein at least twenty days previous to the time designated in such notice for the hearing, and no copy of the complaint need be served. But the failure to make such service upon a defendant does not affect the right to proceed against any or all other of the defendants upon whom service of the summons had been made.

Mont. Code Civ. Proc., s. 2218.

Sec. 212. **Who may defend.** All persons named in the complaint in occupation of, or claiming an interest in, any of the property described in the

complaint, or in the damages for the taking thereof, though not named, may appear, answer, or demur, each in respect to his own property or interest.

Mont. Code Civ. Proc., s. 2219; 51 Cal., 133; 56 id., 508.

Sec. 213. **Appointment of commissioners, etc.** The court or judge has power:

(1) To regulate and determine the place and manner of making the connections and crossings and enjoying the common uses mentioned in subdivision five of section two hundred and six of this chapter, and of the occupying of canyons, passes, and defiles for railroad purposes, as permitted and regulated by law.

(2) To determine whether or not the use for which the property is sought to be appropriated is a public use within the meaning of the laws relating to the district.

(3) To limit the amount of property sought to be appropriated, if in the opinion of the court or judge the quantity sought to be appropriated is not necessary.

(4) If the court or judge is satisfied that the public interests require the taking of such lands, it or he must make an order appointing three competent persons, resident in the precinct, commissioners to ascertain and determine the amount to be paid by the plaintiffs to each owner or other person interested in such property as damages, by reason of the appropriation of such property, and specifying the time and place of the first meeting of such commissioners, and fixing their compensation. Any party may object to the appointment of any person as a commissioner on the same grounds that he might object to him as a trial juror.

Mont. Code Civ. Proc., s. 2220.

Sec. 214. **Meeting of commissioners.** The commissioners mentioned in the last section must, before entering upon their duties, severally take and subscribe an oath before some person qualified to administer oaths, to faithfully and impartially discharge the duties of their appointment. The commissioners must meet at the time and place mentioned in the order appointing them, and proceed to examine the lands sought to be appropriated, and shall hear the allegations and evidence of all persons interested in each of the several parcels of land, and shall ascertain and assess:

(1) The value of the property sought to be appropriated, and all improvements thereon, pertaining to the realty and each and of every separate estate and interest therein; if it consists of different parcels, the value of each parcel and each estate or interest therein must be separately assessed.

(2) If the property sought to be appropriated constitutes only a part of a larger parcel, the damages which will accrue to the portion not sought to be condemned by reason of its severance from the portion sought to be condemned, and the construction of the improvements in the manner proposed by the plaintiff.

(3) Separately, how much the portion not sought to be condemned, and each estate or interest therein will be benefited, if at all, by the construction of the improvements proposed by the plaintiff, and if the benefit shall be equal to the damages assessed under subdivision two the owner of the parcel shall be allowed no compensation except the value of the portion taken; but if the benefits shall be less than the damages assessed the former shall be deducted from the latter, and the remainder shall be the only damages allowed in addition to the value.

(4) If the property sought to be condemned be for a railroad, the cost of good and sufficient fences along the line of such railroad, and the cost of cattle guards where fences may cross the line of such railroad.

(5) As far as practicable compensation must be assessed for each source of damage separately.

Mont. Code Civ. Proc., s. 2221; 46 Cal., 85; 47 id., 515; 49 id., 140; 65 id., 243; 49 id., 586; 32 id., 530.

Sec. 215. **Date with respect to which compensation shall be assessed, and measure of damages.** For the purpose of assessing compensation and damages, the right thereto shall be deemed to have accrued at the date of the summons, and its actual value at that date shall be the measure of compensation of all property to be actually taken, and the basis of damages to property not actually taken but injuriously affected. If an order be made letting the plaintiff into possession, as provided in section two hundred and twenty-two, the compensation and damages awarded shall draw lawful interest from the date of such order. No improvements put upon the property subsequent to the date of the service of summons shall be included in the assessment of compensation or damages.

Mont. Code Civ. Proc., s. 2222; 61 Cal., 90; 6 Mont., 275.

Sec. 216. **Report of commissioners.** Within thirty days after giving their appraisement and the assessment of damages, the commissioners must file a report of their proceedings, accompanied by a map, if a right of way be sought, showing the route, location, and termini thereof, in the office of the clerk of the court, and the clerk must notify the parties interested that such report has been filed, which notice must be served upon all the parties interested in the same manner as a summons.

Mont. Code Civ. Proc., s. 2223.

Sec. 217. **Appeal.** An appeal from any assessment made by the commissioners may be taken and prosecuted in the court where the report of the commissioners is filed, by any party interested. Such appeal must be taken within the period of thirty days after the service upon appellant of the notice of the filing of the award by the service of notice of such appeal upon the plaintiff or his attorney in such proceedings, and the same shall be brought on for trial upon the same notice and in the same manner as other civil actions; and unless a jury shall be waived by the consent of all parties to such appeal, the same shall be tried by jury, and the damages to which appellant may be entitled by reason of the appropriation of his property, shall be reassessed upon the same principle as hereinbefore prescribed for the assessment of such damages by commissioners. Upon any verdict or assessment by commissioners becoming final, judgment shall be entered declaring that upon payment of such verdict or assessment, together with the interest and costs allowed by law, if any, the right to construct and maintain such railroad, or other public work or improvement, and to take, use, and appropriate the property described in such verdict or assessment, for the use and purposes for which the land has been condemned, shall, as against the parties interested in such verdict or assessment, be and remain in the plaintiff, and his or its heirs, successors, or assigns forever. In case the party appealing from the award of commissioners in any proceeding as aforesaid, shall not succeed in increasing the amount of damages finally awarded to him in such proceeding, he shall not recover the costs of such appeal; but all the costs of the appellee upon such appeal shall be taxed against and recovered from the appellant: Provided, Upon the trial of such appeal the plaintiff may contest the right of any party or parties thereto to any of the property mentioned and set forth or involved in the appeal, which was located after the preliminary survey of any such railroad seeking to condemn its right of way under and pursuant to the

provisions of this Act: Provided, Such condemnation proceedings are begun within one year after such preliminary survey.

Mont. Code Civ. Proc., s. 2224.

Sec. 218. **New proceedings to cure defective title.** If the title attempted to be acquired is found to be defective from any cause, the plaintiff may again institute proceedings to acquire the same, as in this chapter prescribed.

Mont. Code Civ. Proc., s. 2225.

Sec. 219. **Payment of damages.** The plaintiff must, within thirty days after final judgment, pay the sum of money assessed; but may, at the time of or before the payment, elect to build the fences and cattle guards; and if he so elect shall execute to the defendant a bond, with sureties to be approved by the court, in double the assessed cost of the same, to build such fences and cattle guards within eight months from the time the railroad is built on the land taken; and if such bond be given, need not pay the cost of such fences and cattle guards. In an action on such bond the plaintiff may recover reasonable attorney's fees.

Mont. Code Civ. Proc., s. 2226.

Sec. 220. **To whom paid.** The payment may be made to the defendants entitled thereo, or the money may be deposited in court for the defendants, and be distributed to those entitled thereto. If the money be not so paid or deposited, the defendants may have execution as in civil cases; and if the money can not be made on execution, the court or judge, upon a showing to that effect, must set aside and annul the entire proceedings and restore possession of the property to the defendant, if possession has been taken by the plaintiff.

Mont. Code Civ. Proc., s. 2227.

Sec. 221. **Final order of condemnation.** When payments have been made, and the bond given, if the plaintiff elects to give one, as required by the last two sections, the court or judge must make a final order of condemnation, which must describe the property condemned and the purposes of condemnation. A copy of the order must be filed in the office of the commissioner of the recording district wherein the land is located, and thereupon the property described therein shall vest in the plaintiff for the purposes therein specified.

Mont. Code Civ. Proc., s. 2228; 6 Oreg., 378; 11 id., 282; 9 id., 377.

Sec. 222. **Putting plaintiff in possession.** At any time after the report and assessment of damages of the commissioners has been made and filed in the court, and either before or after appeal from such assessment, or from any other order or judgment in the proceedings, the court or any judge thereof at chambers, upon application of the plaintiffs, shall have power to make an order that upon payment into court for the defendant entitled thereto of the amount of damages assessed, either by the commissioners or by the jury, as the case may be, the plaintiff be authorized, if already in possession of the property of such defendant sought to be appropriated, to continue in such possession; or, if not in possession, that the plaintiff be authorized to take possession of such property and use and possess the same during the pendency and until the final conclusion of the proceedings and litigation; and that all actions and proceedings against the plaintiff on account thereof be stayed until such time: Provided, however, Where an appeal is taken by such defendant, the court or judge may in its or his discretion require the plaintiff, before continuing or taking such possession, in addition to paying

into court the amount of damages assessed, to give a bond or undertaking, with sufficient sureties, to be approved by the judge, and to be in such sum as the court or judge may direct, conditioned to pay defendant any additional damages and costs over and above the amount assessed, which it may finally be determined that defendant is entitled to for the appropriation of the property, and all damages which defendant may sustain if for any cause such property shall not be finally taken for public uses. The amount assessed as damages by the commissioners, or by the jury on appeal, as the case may be, shall be taken and considered, for the purposes of this section, until reassessed or changed in the further proceedings, as just compensation for the property appropriated; but the plaintiff, by payment into court of the amount assessed, or by giving security, as above provided, shall not be thereby prevented or precluded from appealing from such assessment, but may appeal in the same manner and with the same effect as if no money had been deposited or security given; and in all cases where the plaintiff deposits the amount of the assessment and continues in possession or takes possession of the property, as herein provided, the defendant entitled thereto, if there be no dispute as to the ownership of the property, may at any time demand and receive from the court the money so deposited, and shall not by such demand or receipt be barred or concluded from his right of appeal from such assessment, but may, notwithstanding, take and prosecute such appeal from such assessment: Provided, If the amount of such assessment is finally reduced on appeal by either party, such defendant who has received the amount of the assessment deposited shall be liable to the plaintiff for any excess of the amount so received by him over the amount finally assessed, with legal interest on such excess from the time such defendant received the money deposited, and the same may be recovered by action: And provided further, Upon any appeal from the assessment of damages by the commissioners or a jury, the jury may find as compensation or damages a less as well as an equal or greater amount than that assessed by the commissioners.

Mont. Code Civ. Proc., s. 2229; 16 Mont., —; 13 Cal., 306; 29 id., 112; 65 id., 275.

Sec. 223. **Payment of costs.** Costs may be allowed, or, if not so allowed, may be so apportioned between the parties on the same or adverse sides, in the discretion of the court.

Mont. Code Civ. Proc., s. 2230.

Sec. 224. **Rules of practice.** Except as otherwise provided in this chapter, the provisions of title two of this Act are applicable to and constitute the rules of practice of the proceedings mentioned in this Act.

Mont. Code Civ. Proc., s. 2231; 18 Fed. Rep., 339; 47 Cal., 70; 59 id., 265, 320; 1 Oreg., 282.

CHAPTER TWENTY-THREE.

OF FOREIGN CORPORATIONS.

Sec.
225. To file copy of charter and appoint agent.
226. Consent of agent, etc.
227. Death or removal of agent.
228. Penalty for failure to comply.
229. Annual reports to be filed.
230. Existing corporations to comply.
231. Penalty for failure to comply.

Sec. 225. **To file copy of charter and appoint agent.** All corporations or joint stock companies organized under the laws of the United States, or the

laws of any State or Territory of the United States, shall, before doing business within the district, file in the office of the secretary of the district and in the office of the clerk of the district court for the division wherein they intend to carry on business, a duly authenticated copy of their charter or articles of incorporation, and also a statement, verified by the oath of the president and secretary of such corporation, and attested by a majority of its board of directors, showing—

(1) The name of such corporation and the location of its principal office or place of business without the district; and, if it is to have any place of business or principal office within the district, the location thereof;

(2) The amount of capital stock;

(3) The amount of its capital stock actually paid in in money;

(4) The amount of its capital stock paid in in any other way, and in what;

(5) The amount of the assets of the corporation and of what the assets consist, with the actual cash value thereof;

(6) The liabilities of such corporation, and if any of its indebtedness is secured, how secured, and upon what property.

Such corporation or joint stock company shall also file, at the same time and in the same offices, a certificate, under the seal of the corporation and the signature of its president, vice-president, or other acting head, and its secretary, if there be one, certifying that the corporation has consented to be sued in the courts of the district upon all causes of action arising against it in the district, and that service of process may be made upon some person, a resident of the district, whose name and place of residence shall be designated in such certificate, and such service, when so made upon such agent, shall be valid service on the corporation or company, and such agent shall reside at the principal place of business of such corporation or company in the district.

Sec. 226. **Consent of agent, etc.** The written consent of the person so designated to act as such agent shall also be filed in like manner, and such designation shall remain in force until the filing in the same offices of a written revocation thereof, or of the consent, executed in like manner. A certified copy of the designation so filed, accompanied with a certificate that it has not been revoked, is presumptive evidence of the execution thereof, and conclusive evidence of the authority of the officer excuting it.

Sec. 227. **Death or removal of agent.** In case of the death, removal from the district, or disqualification of the person so designated, or of the revocation of his consent, it shall be the duty of the clerk of the district court to notify such corporation or company; and it shall be the duty of such corporation or company, within sixty days thereafter, to designate another person in the manner hereinbefore provided.

Sec. 228. **Penalty for failure to comply.** If any such corporation or company shall attempt or commence to do business in the district without having first filed said statements, certificates, and consents required by this chapter, it shall forfeit the sum of twenty-five dollars for every day it shall so neglect to file the same; and every contract made by such corporation, or any agent or agents thereof, during the time it shall so neglect to file such statements, certificates, or consents, shall be voidable at the election of the other party thereto. It shall be the duty of the United States attorney for the district to sue for and recover, in the name of the United States, the penalty above provided, and the same, when so recovered, shall be paid into the Treasury of the United States.

Sec. 229. **Annual reports to be filed.** Every such corporation or company shall annually, and within thirty days from the first day of July of each year,

make a report, which shall be in the same form and contain the same information as required in the statement mentioned in section two hundred and twenty-five of this chapter, which report shall be filed in the office of the secretary of the district, and a duplicate thereof in the office of the clerk of the district court for the division wherein the business of the corporation is carried on.

Sec. 230. **Existing corporations to comply.** Any such corporation or company that has heretofore engaged in business, performed acts, or made contracts in the district, may, within ninety days from the time this Act goes into effect, comply with the provisions hereof, and thereupon all its acts and contracts done and made before this Act goes into effect shall be valid and enforceable.

Sec. 231. **Penalty for failure to comply.** If any such corporation or company shall fail to comply with any of the provisions of this chapter, all its contracts with citizens of the district shall be void as to the corporation or company, and no court of the district, or of the United States, shall enforce the same in favor of the corporation or company so failing.

CHAPTER TWENTY-FOUR.

OF THE INCORPORATION OF CEMETERIES.

Sec.
232. Cemetery association may be formed.
233. How formed.
234. Succession of trustees.
235. Association may describe terms of membership, etc.
236. General powers and management of such associations.
237. May sell unsuitable lands.
238. Burial lots exempt from execution and taxation.
239. Association may have plat recorded.

Sec. 232. **Cemetery association may be formed.** It shall be lawful for any number of persons, not less than five, who are residents of the precinct in which they desire to form themselves into an association, to form themselves into a cemetery association, and to elect any number of their members, not less than three, to serve as trustees, and one member as clerk, who shall continue in office during the pleasure of the society.

Laws Oreg., Oct. 20, 1882; Hill's Ann. Laws, s. 3320.

Sec. 233. **How formed.** The clerk to be elected, as provided in section two hundred and thirty-two, shall forthwith make out a true record of the proceedings of the meetings provided for by the preceding section, certify to and file a copy of the same with the commissioner of the precinct in which such meeting shall be held, and another copy of the same in the office of the clerk of the district court, together with the name by which such association desires to be known, and from and after filing such record the trustees and their associated members and successors shall be invested with the powers, privileges, and immunities incident to aggregate corporations.

Laws Oreg., Oct. 20, 1882; Hill's Ann. Laws, s. 3321.

Sec. 234. **Succession of trustees.** The trustees who may be elected under the provisions of section two hundred and thirty-two shall have perpetual succession, and shall be capable in law of contracting and of prosecuting and defending actions.

Laws Oreg., Oct. 20, 1882; Hill's Ann. Laws, s. 3322.

Sec. 235. **Association may prescribe terms of membership, etc.** All such associations shall have power to prescribe the terms on which members may be admitted, the number of its trustees and officers, and the time and manner of their election or appointment, and the time and place of meeting for the trustees and for the association, and to pass all such other by-laws as may be necessary for the good government of such association.

Laws Oreg., Oct. 20, 1882; Hill's Ann. Laws, s. 3323.

Sec. 236. **General powers and management of such association.** Such association shall be authorized to purchase, or to take by gift or devise, and hold, land exempt from execution and from any appropriation to public purposes, for the sole purpose of a cemetery not exceeding eighty acres, which shall be exempt from taxation, if intended to be used exclusively for burial purposes, and in no wise with a view to the profit of the members of such association. Such association may by its by-laws provide that a stated percentage of the moneys realized from the sale of lots, donations, or other sources of revenue shall constitute an irreducible fund, which fund may be invested in such manner or loaned upon such securities as the association or the trustees thereof deem proper. The interest or income arising from the irreducible fund provided for in any by-law, or so much thereof as may be necessary, shall be devoted exclusively to the preservation and embellishment of the cemetery, and where any by-law has been enacted for the creation of an irreducible fund as herein provided for it can not thereafter be amended in any manner whatsoever, except for the purpose of increasing such fund. After paying for the land, all the future receipts and income of such association subject to the provisions herein for the creation of an irreducible fund, whether from the sale of lots, from donations, rents, or otherwise, shall be applied exclusively to laying out, preserving, protecting, and embellishing the cemetery and the avenues leading thereto, and in the erection of such buildings as may be necessary or convenient for the cemetery purposes, and to paying the necessary expenses of the association. No debts shall be contracted in anticipation of any future receipts, except for originally purchasing, laying out, and embellishing the grounds and avenues, for which debts so contracted such association may issue bonds or notes, and secure the same by way of mortgage upon any of its lands, excepting such lots as shall have been conveyed to the members thereof; and such association shall have power to adopt such rules and regulations as they shall deem expedient for disposing of and for conveying burial lots.

Laws Oreg., Oct. 20, 1882; Hill's Ann. Laws, s. 3324.

Sec. 237. **May sell unsuitable lands.** It shall be lawful for said trustees, whenever in their opinion any portion or portions of their lands are unsuitable for burial purposes, to sell such portion or portions, and apply the avails thereof to the general purposes of such association.

Laws Oreg., Oct. 20, 1882; Hill's Ann. Laws, s. 3325.

Sec. 238. **Burial lots exempt from execution and taxation.** Burial lots sold by such association shall be for the sole purpose of interment, and shall be exempt from taxation, execution, attachment, or any other claims, lien, or process whatsoever, if used as intended exclusively for burial purposes, and in no wise with a view to profit.

Laws Oreg., Oct. 20, 1882; Hill's Ann. Laws, s. 3326.

Sec. 239. **Such association must have plat recorded, etc.** All such associations shall cause a plan of their grounds, and of the lots by them laid out, to be made and recorded in a book kept for that purpose by the clerk of such association, such lots to be numbered by regular consecutive numbers, and shall have power to inclose, improve, and adorn the grounds and avenues,

to erect buildings for the use of the association, and to prescribe rules for the designation and adornment of lots, and for erecting monuments in the cemetery, and to prohibit any use, division, improvement, or adornment of a lot which they may deem improper. An annual statement of the financial affairs of such association shall be made by the clerk thereof.

Laws Oreg., Oct. 20, 1882; Hill's Ann. Laws, s. 3327.

CHAPTER TWENTY-FIVE.

OF CONTAGIOUS DISEASE AMONG ANIMALS.

Sec.
240. Penalty for bringing diseased animals into said district.
241. Diseased animals to be kept away from others.
242. Procedure against persons violating this code.
243. Proceedings in case of violation of this law.
244. Certain words defined.
245. Officers must prosecute.
246. Jurisdiction.

Sec. 240. **Penalty for bringing diseased animals into said districts.** Any person, persons, company, or corporation who shall bring, or cause to be brought, or aid in bringing, into the district any sheep, hog, horse, or cattle of any kind, or any domestic animal of any kind, knowing the same to be affected with any contagious or infectious disease, shall be guilty of a misdemeanor, and on conviction be punished by a fine of not less than one hundred dollars nor more than one thousand dollars.

Laws Oreg., Oct. 28, 1874; Hill's Ann. Laws, s. 3365.

Sec. 241. **Diseased animal to be kept away from others.** If any person, or persons, company or corporation owning or having possession or control of any animal affected by any such contagious or infectious disease shall fail to keep the same within an inclosure, or herd the same in some place where it will be secure from contact with other animals not so affected, or shall suffer such infected animal to range where it will be likely to come in contact with another animal not so affected, shall be guilty of a misdemeanor, and on conviction punished by a fine of not more than one thousand dollars for each offense.

Laws Oreg., Oct. 28, 1874; Hill's Ann. Laws, s. 3366.

Sec. 242. **Liability for damages.** Any person, company, or corporation violating any of the provisions of this chapter shall be liable for all damages sustained by any other person, company, or corporation through such violation.

Laws Oreg., Oct. 28, 1874; Hill's Ann. Laws, s. 3368.

Sec. 243. **Proceedings in case of violation of this law.** Any person or persons found violating the provisions of this chapter may be arrested and held without warrant in the same manner as in cases of persons found breaking the peace; and the person or persons making the arrest, with or without warrant, shall use reasonable diligence to give notice thereof to the owner or owners of the animal or animals found in the charge of the person or persons arrested, and shall properly care and provide for such animal or animals until the owner or owners of such animal or animals, or a duly authorized agent of the same, shall take charge of the same: Provided, Such owner or owners or agent shall claim and take charge of the same within sixty days of the date of the notice; and the person or persons making such arrest shall have a lien upon such animal or animals for the expense of such care and provisions.

Laws Oreg., Oct. 28, 1874; Hill's Ann. Laws, s. 3370.

Sec. 244. **Certain words defined.** In this chapter the word "animal" or "animals" shall be held to include all brute creatures, and the words "owner," "owners," "person," "persons," and "whoever" shall be held to include corporations as well as individuals, and the knowledge and acts of agents of and persons employed by corporations in regard to the treatment of animals transported, owned, or employed by or in the custody of such corporation or corporations shall be held to be acts and knowledge of such corporation or corporations.

Laws Oreg., Oct. 23, 1874; Hill's Ann. Laws, s. 3371.

Sec. 245. **Officers must prosecute.** It shall be the duty of any marshal or deputy marshal to arrest any violator or violators of the provisions of this chapter, and to prosecute any violator or violators of its provisions which shall come to his knowledge or notice, and all fines and forfeitures which shall be collected for violations of any of the provisions hereof shall be paid into the office of the clerk of the district court, and such clerk shall turn the same, according to law, into the Treasury of the United States.

Laws Oreg., Oct. 23, 1874; Hill's Ann. Laws, s. 3372.

Sec. 246. **Jurisdiction.** Commissioners within their respective precincts shall have jurisdiction over all offenses committed under the provisions of this chapter.

Laws Oreg., Oct. 23, 1874; Hill's Ann. Laws, s. 3373.

CHAPTER TWENTY-SIX.

OF ESTRAYS.

Sec.
247. Commissioners to keep record of estrays.
248. Householder may take up estray and post notices thereof.
249. Owner to recover estray on proof and payment of costs.
250. Statement of taking up, etc.
251. When description of estray to be published in newspaper.
252. Claim of owner after appraisal.
253. Sale of estray if not proven within six months.
254. Penalty for violating above provisions.

Sec. 247. **Commissioners to keep record of estrays.** It shall be the duty of the commissioner of each precinct in the district to keep a book of suitable dimensions to be called the record of estrays.

Laws Oreg., Oct. 15, 1862; Hill's Ann. Laws, s. 3374; Shepherd v. Hawley, 4 Oreg., 206.

Sec. 248. **Householder may take up estray and post notices thereof.** Any householder about whose premises any estray may be in the habit of running at large may take up the same, and shall immediately post notices in three public places in the district, one of which shall be in the precinct in which the estray was taken up, giving as correct a description as may be of natural and artificial marks, probable age, size, and so forth.

Laws Oreg., Oct. 21, 1864; Hill's Ann. Laws, s. 3375.

Sec. 249. **Owner to recover estray on proof and payment of charges.** If, previous to the expiration of ten days from taking up, the owner shall prove the estray to be his, he shall be entitled to the same by paying charges, which shall be one dollar for taking up, posting, and so forth, and a reasonable rate for keeping the same. And if the owner shall further prove that the person so posting an estray knew to whom such estray belonged and yet did not notify the owner of his intention to post the estray, the person so taking and posting shall not recover for either posting or keeping.

Laws Oreg., Oct. 15, 1862; Hill's Ann. Laws, s. 3376.

Sec. 250. Statement of taking up, posting, etc.; appraisal and record by commissioner. If, at the expiration of ten days no one shall have made his claims known to the take-up, it shall be his duty to make a statement to the nearest commissioner of the precinct in which such estray is taken up, under oath, of the taking up of such estray, post, and so forth, according to law; whereupon the commissioner shall appraise the estray and immediately make record of the same in the record of estrays. And such commissioner shall receive for each appraisal one dollar.

Laws Oreg., Oct. 15, 1862; Hill's Ann. Laws, s. 3377.

Sec. 251. When description of estray to be published in newspaper. If the amount of such appraisement shall exceed fifteen dollars the person taking up such estrays shall be further required to cause to be published, in a newspaper published in the precinct, or, if there be none, then in a newspaper of general circulation in the district, a description of the same, giving marks as above specified, the name and residence of the finder, and, as near as may be, the time at which the estray was taken up.

Laws Oreg., Oct. 15, 1862; Hill's Ann. Laws, s. 3379.

Sec. 252. Claim of owner after appraisal. If the owner, or any person entitled to the possession of an estray, shall appear and make out his title thereto and pay the charges thereon within six months from the time the notice is filed with the commissioner, as provided in section two hundred and fifty, and make out his right thereto, he shall have such estray restored to him upon paying all lawful charges which have been incurred in relation to the same.

Laws Oreg., Oct. 15, 1862; Hill's Ann. Laws, s. 3380.

Sec. 253. Sale of estray if not proven within six months. If the person entitled to the possession of any estray shall not appear and make out his title thereto within six months from the time of entry thereof by the commissioner, such estray shall be sold, at the request of the finder, by the marshal or any deputy marshal of the district, at public auction, upon first giving public notice thereof in writing by posting up the same in three public places in the precinct, one of which shall be at or adjoining the post-office, at least ten days before such sale, and the finder may bid therefor at such sale; and after deducting all the lawful charges of the finder as aforesaid and the fees of the marshal or deputy marshal, which shall be the same as upon a sale on an execution, the remaining proceeds of such sale shall be deposited with the clerk of the district court, and if the owner of the property sold, or his legal representatives, shall not, within one year after the money shall have been so deposited with the clerk of the district court, furnish satisfactory evidence to the district judge of the ownership of such property the amount so deposited with the clerk of the district court shall be paid into the Treasury of the United States.

Laws Oreg., Oct. 15, 1862; Hill's Ann. Laws, s. 3381.

Sec. 254. Penalty for violating above provisions. If any person shall take up, keep, or use any estray without complying with the provisions of this code he shall be liable to a penalty of double the value of such estray, to be sued for and recovered in the district court at the suit of the United States; and it is hereby made the duty of the district attorney to prosecute an action against such offender for the violation of the provisions of this code when the same shall be within his personal knowledge or when complaint in writing, under oath, be filed with him alleging the violation of this code.

Laws Oreg., Oct. 15, 1862; Hill's Ann. Laws, s. 3382.

CHAPTER TWENTY-SEVEN.

OF INTEREST AND USURY.

Sec.
255. Legal rate of interest.
256. Illegal interest not to be taken.
257. May recover usurious interest paid.
258. Illegal interest, contract for.
259. Assignee of usurious contract may recover amount paid for same.
260. Mortgagor and mortgagee may agree which shall pay taxes, when.
261. Assessment, how made in such cases.

Sec. 255. **Legal rate of interest.** The rate of interest in the district shall be eight per centum per annum, and no more, on all moneys after the same become due; on judgments and decrees for the payment of money; on money received to the use of another and retained beyond a reasonable time without the owner's consent, expressed or implied, or on money due upon the settlement of matured accounts from the day the balance is ascertained; on money due or to become due where there is a contract to pay interest and no rate specified. But on contracts, interest at the rate of twelve per centum may be charged by express agreement of the parties, and no more.

Laws Oreg., Oct. 25, 1880; Hill's Ann. Laws, s. 3587.

Sec. 256. **Illegal interest not to be taken.** No person shall, directly or indirectly, receive in money, goods, or things in action, or in any other manner, any greater sum or value for the loan or use of money, or upon contract founded upon any bargain, sale, or loan of wares, merchandise, goods, chattels, lands, and tenements, than in this chapter prescribed.

Laws Oreg., Oct. 16, 1862; Hill's Ann. Laws, s. 3588.

Sec. 257. **May recover usurious interest paid.** If usurious interest, as defined by the preceding sections, shall hereafter be received or collected, the person or persons paying the same, or their legal representatives may, by action brought in any court of competent jurisdiction, within two years after such payment, recover from the person, firm, or corporation receiving the same double the amount of the interest so received or collected.

Revised Stats. Texas, 1895, art. 3106.

Sec. 258. **Illegal interest, contract for.** If it shall be ascertained in any action brought on any contract that a rate of interest has been contracted for greater than is authorized by this chapter, either directly or indirectly, in money, property, or other valuable thing, or that any gift or donation of money, property, or other valuable thing has been made or promised to be made to a lender or creditor, or to any person for him, directly or indirectly, either by the borrower or debtor, or any person for him, the design of which is to obtain for money so loaned, or for debts due or to become due, a rate of interest greater than that specified by the provisions of this chapter, the same shall be deemed to be usurious, and shall work a forfeiture of the entire interest on the debt. The court before which such action is prosecuted shall render judgment for the amount due, without interest, on the sum loaned or the debt contracted, against the defendant and in favor of the plaintiff, and against the plaintiff for costs of action, whether such action be contested or not.

Laws Oreg., Oct. 16, 1862; Hill's Ann. Laws, s. 3589; 5 Oreg., 435; Barger v. Taylor, 30 ibid., 228; Balfour v. Davis, 14 id., 47; In re Pittock, 2 Saw., 416; Hathaway v. Meads, 11 Oreg., 66; Burns v. Scoggin, 9 Saw., 73; Sujette v. Wilson, 13 Oreg., 514.

Sec. 259. **Assignee of usurious contract may recover amount paid for same.**

Nothing in this code shall be construed to prevent the proper bona fide assignee of any usurious contract recovering against his immediate assignor, or the original usurer, the full amount paid by him for such contract, but the same may be recovered by proper action in any court having competent jurisdiction: Provided, Such assignee had no notice of the usury affecting the contract.

Laws Oreg., Oct. 16, 1862; Hill's Ann. Laws, s. 3590.

Sec. 260. **Mortgagor and mortgagee may agree which shall pay taxes, when.** All contracts made and entered into in the district by and between borrower and lender, debtor and creditor, or mortgagor and mortgagee, on which the rate of interest is eight per centum or under, whereby one party shall agree to pay the taxes on the debt, credit, or mortgage existing or entered into between such parties, be, and the same are hereby, declared legal and valid, and shall not be deemed or taken to be usurious.

Laws Oreg., Feb. 25, 1885; Hill's Ann. Laws, s. 3593.

Sec. 261. **Assessment, how made in such cases.** All contracts entered into under section two hundred and sixty may be enforced by the parties thereto in the courts of the district: Provided, In making the assessments of credits, loans, or mortgages the same shall be assessed to the holder thereof.

Laws Oreg., Feb. 25, 1885; Hill's Ann. Laws, s. 3594.

CHAPTER TWENTY-EIGHT.

OF THE LIENS OF MECHANICS, LABORERS, AND OTHERS.

Sec.
262. Lien, to whom given.
263. Lien extends to the land.
264. Priority between liens and mortgages.
265. Owner of land charged as owner of building, when.
266. Claim of lien must be filed.
267. Commissioner must record liens.
268. Foreclosure must be commenced in six months.
269. Lien for grading street, etc.
270. Suits to enforce liens must be before commissioner.
271. Payment by owner of building does not prevent lien, when.
272. Amount of recovery not to exceed amount due on contract; exception.
273. Building materials, when not subject to attachment.
274. Definitions.
275. Existing liens and proceedings thereunder not impaired.

Sec. 262. **Lien, to whom given.** Every mechanic, artisan, machinist, builder, contractor, lumber merchant, laborer, teamster, drayman, and other persons performing labor upon or furnishing material of any kind to be used in the construction, development, alteration, or repair, either in whole or in part, of any building, wharf, bridge, flume, mine, tunnel, fence, machinery, or aqueduct, or any structure or superstructure, shall have a lien upon the same for the work or labor done or material furnished at the instance of the owner of the building or other improvement or his agent; and every contractor, subcontractor, architect, builder, or other person having charge of the construction, alteration or repair, in whole or in part, of any building or other improvement as aforesaid, shall be held to be the agent of the owner for the purposes of this code.

Laws Oreg., Feb. 20, 1891; Hill's Ann. Laws, s. 3669; 16 Oreg., 368; 19 id., 61; id., 190; Willamette Mills Co. v. Shea, 24 ibid., 40; Paterson v. Gallagher, 25 ibid, 228; Honeyman v. Thomas, ibid, 539; Curtis v. Sastanovich, 26 ibid., 118; Sellwood Lumber Co. v. Monnell, ibid., 267; Osborn v. Logus, 28 ibid., 302; Harrisburg Lumber Co. v. Washburn, 29 ibid., 150; Allen v. Elwert, ibid., 429; Bank of Idaho v. Malheur Co., 30 Oreg., 420.

Sec. 263. **Lien extends to the land; limitation thereof.** The land upon which any building or other improvement as aforesaid shall be constructed, together with a convenient space about the same, or so much as may be required for the convenient use and occupation thereof (to be determined by the judgment of the court at the time of the foreclosure of such lien), and the mine on which the labor was performed or for which the material was furnished, shall also be subject to the liens created by this code, if, at the time the work was commenced or the materials for the same had been commenced to be furnished, the land belonged to the person who caused the building or other improvement to be constructed, altered, or repaired; but if such person owned less than a fee-simple estate in such land, then only his interest therein shall be subject to such lien; and in case such interest shall be a leasehold interest, and the holder thereof shall have forfeited his rights thereto, the purchaser of such building or improvement and leasehold term, or so much thereof as remains unexpired at any sale under the provisions of this code, shall be held to be the assignee of such leasehold term, and as such shall be entitled to pay the lessor all arrears of rent or other money and costs due under the lease, unless the lessor shall have regained possession of the land and property, or obtained judgment for the possession thereof, prior to the commencement of the construction, alteration, or repair of the building or other improvement thereof; in which event the purchaser shall have the right only to remove the building or other improvement within thirty days after he shall have purchased the same; and the owner of the land shall receive the rent due him, payable out of the proceeds of the sale, according to the terms of the lease, down to the time of such removal.

Laws Oreg., Feb. 11, 1885; Hill's Ann. Laws, s. 3670; 15 Oreg., 536; Willamette Mills Co. v. Shea, 24 ibid., 40; Cross v. Tscharnig, 27 ibid., 52; Bank of Idaho v. Malheur Co., 30 ibid., 420.

Sec. 264. **Priority between liens and mortgages.** A lien created by this code upon any parcel of land shall be preferred to any lien, mortgage, or other incumbrance which may have attached to the land subsequent to the time when the building or other improvement was commenced, or the materials were commenced to be furnished and placed upon or adjacent to the land; also to any lien, mortgage, or other incumbrance which was unrecorded at the time when the building, structure, or other improvement was commenced, or other materials for the same were commenced to be furnished and placed upon or adjacent to the land; and all liens created by this code upon any building or other improvements shall be preferred to all prior liens, mortgages, or other incumbrances upon the land upon which the building or other improvement shall have been constructed or situated when altered or repaired; and in enforcing such lien, such building or other improvement may be sold separately from the land, and when so sold the purchaser may remove the same, within a reasonable time thereafter, not to exceed thirty days, upon the payment to the owner of the land of a reasonable rent for its use from the date of its purchase to the time of removal: Provided, If such removal be prevented by legal proceedings, the thirty days shall not begin to run until the final determination of such proceedings in the court of first resort or the appellate court if appeal be taken.

Laws Oreg., Feb. 11, 1885; Hill's Ann. Laws, s. 3671; Harrisburg Lumber Co. v. Washburn, 29 Oreg., 151.

Sec. 265. **Owner of land charged as owner of building, when.** Every building, or other improvement mentioned in section two hundred and sixty-two, constructed upon any lands with the knowledge of the owner or the person having or claiming any interest therein, shall be held to have been constructed

at the instance of such owner or person having or claiming any interest therein; and the interest owned or claimed shall be subject to any lien filed in accordance with the provisions of this code, unless such owner or person having or claiming an interest therein shall, within three days after he shall have obtained knowledge of the construction, alteration, or repair, give notice that he will not be responsible for the same, by posting a notice in writing to that effect in some conspicuous place upon the land, or upon the building or other improvement situated thereon.

Laws Oreg., Feb. 11, 1885; Hill's Ann. Laws, s. 3672; 19 Oreg., 190; Willamette Lumber Co. v. McLeod, 27 ibid., 272; Cross v. Tscharnig, 27 ibid., 49.

Sec. 266. **Claim of lien must be filed.** It shall be the duty of every original contractor, within sixty days after the completion of his contract, and of every mechanic, artisan, machinist, builder, lumber merchant, laborer, or other person, save the original contractor, claiming the benefit of this code, within thirty days after the completion of the alteration or repair thereof, or after he has ceased to labor thereon from any cause, or after he has ceased to furnish materials therefor, to file with the recorder of the precinct in which such building or other improvement, or some part thereof, shall be situated, a claim containing a true statement of his demand, after deducting all just credits and offsets, with the name of the owner or reputed owner, if known, and also the name of the person by whom he was employed or to whom he furnished the materials, and also a description of the property to be charged with the lien sufficient for identification, which claim shall be verified by the oath of himself or of some other person having knowledge of the facts.

Laws Oreg., Feb. 11, 1875; Hill's Ann. Laws, s. 3673; 15 Oreg., 533; 16 ibid., 369; Morehouse v. Collins, 23 Oreg., 138; Nicolai v. Van Fridagh, ibid., 149; Gordon v. Deal, ibid., 153; Rankin v. Mulaskey, ibid, 593; Willamette Mills Co. v. Shea, 24 ibid., 40; Rowland v. Harmon, ibid., 539; Dillon v. Hart, 25 Oreg., 49; Curtis v. Seatanovich, 26 ibid., 107; Chamberlain v. Hibbard, 26 ibid., 428; Osborne v. Logus, 28 Oreg., 302; Leick v. Beers, 28 ibid., 483; Inman v. Henderson, 29 ibid., 116; Harrisburg Lumber Co. v. Washburn, ibid., 150; Allen v. Elwert, ibid., 429; Avery v. Butler, 30 ibid., 287; Getty v. Ames, ibid., 573.

Sec. 267. **Commissioner must record liens.** The recorder shall record the claim in a book kept for that purpose, which records shall be indexed as deeds and other conveyances are required by law to be indexed, and for which he shall receive the same fees as are allowed by law for recording deeds and other instruments.

Laws Oreg., Feb. 11, 1875; Hill's Ann. Laws, s. 3674; 16 Oreg., 369.

Sec. 268. **Foreclosure must be commenced in six months.** No lien provided for in this code shall bind any building, structure, or other improvement for a longer period than six months after the same shall have been filed unless suit be brought before the proper court within that time to enforce the same, or, if a credit be given, then six months after the expiration of such credit; but no lien shall be continued in force for a longer time than one year from the time the work is completed by any agreement to give credit.

Laws Oreg., Feb. 11, 1875; Hill's Ann. Laws, s. 3675.

Sec. 269. **Lien for grading street, etc.** Any person who shall, at the request of the owner of any lot in the district, grade, fill in, or otherwise improve the same or the street in front of or adjoining the same, shall have a lien upon such lot for his work done and materials furnished in the grading, filling in, or otherwise improving the same; and all the provisions of this code respecting the securing and enforcing the mechanic's lien shall apply thereto.

Laws Oreg., Feb. 11, 1875; Hill's Ann. Laws, s. 3676; 20 Oreg., 434.

Sec. 270. **Suits to enforce liens to be brought before commissioners, etc.** Actions to enforce the liens created by this code shall be brought before the

district court, and the pleadings, process, practice, and other proceedings shall be the same as in other cases. In case the proceeds of any sale under this code shall be insufficient to pay all lien holders under it, the liens of all persons other than the original contractor and subcontractors shall first be paid in full, or pro rata if the proceeds be insufficient to pay them in full; and out of the remainder, if any, the subcontractor shall be paid in full, or pro rata if the remainder be insufficient to pay them in full, and the remainder, if any, shall be paid to the original contractor; and each claimant shall be entitled to execution for any balance due him after such distribution, such execution to be issued by the clerk of the district court, upon demand, after the return of the marshal or other officer making the sale showing such balance due.

In all actions under this chapter the district court shall, upon entering judgment for the plaintiff, allow as a part of the costs all moneys paid for the filing and recording of the lien and also a reasonable amount as attorney's fees. All actions to enforce any lien created by this code shall have preference upon the calendar of civil actions brought before the district court and shall be tried without unnecessary delay.

In all actions to enforce any lien created by this chapter all persons personally liable and all lien holders whose claims have been filed for record under the provisions of section two hundred and sixty-six shall, and all other persons interested in the matter in controversy or in the property sought to be charged with the lien may, be made parties; but such as are not made parties shall not be bound by such proceedings. The proceedings upon the foreclosure of the liens created by this code shall be, as nearly as possible, made to conform to the proceedings of a foreclosure of a mortgage lien upon real property.

Laws Oreg., Feb. 11, 1885; Hill's Ann. Laws, s. 3677; Osborn v. Logus, 28 Oreg., 307.

Sec. 271. **Payment by owner of building does not prevent lien, when.** No payment by the owner of the building or structure to any original contractor or subcontractor, made before thirty days from the completion of the building, shall be valid for the purpose of defeating or discharging any lien created by this chapter in favor of any workman, laborer, lumber merchant, or material man, unless such payment so made by the owner of the building or structure to such original contractor or subcontractor has been distributed among such workmen, laborers, lumber merchants, or material men, or, if distributed in part only, then the same shall be valid only to the extent the same has been so distributed.

Laws Oreg., Feb. 11, 1885; Hill's Ann. Laws, s. 3678; 16 Oreg., 363.

Sec. 272. **Amount of recovery not to exceed amount due on contract.** Any contractor shall be entitled to recover upon a lien filed by him only such amount as may be due to him according to the terms of his contract, after deducting all claims of other parties for work done and materials furnished as aforesaid; and in all cases where a lien shall be filed under this chapter for work done or materials furnished to any contractor he shall defend any action brought thereupon at his own expense, and during the pendency of such action the owner may withhold from the contractor the amount of money for which such lien is filed; and in case of judgment against the owner or his property upon the liens the owner shall be entitled to deduct from any amount due or about to become due by him to the contractor the amount of such judgment and costs; and if the amount of such judgment and costs shall exceed the amount due by him to the contractor, or if the owner shall have settled with the contractor in full, he shall be entitled to recover back from the contractor any amount so paid by him, the owner, in excess of the contract price, and for which the contractor was originally the party liable.

Laws Oreg., Feb. 11, 1885; Hill's Ann. Laws, s. 3679; Osborn v. Logus, 28 Oreg., 307.

Sec. 273. **When building materials not subject to attachment.** Whenever any mechanic, artisan, machinist, builder, lumber merchant, contractor, laborer, or other person shall have furnished or procured any materials for use in the construction, alteration, or repair of any building or other improvement, such materials shall not be subject to attachment, execution, or other legal process to enforce any debt due by the purchaser of such materials except a debt due for the purchase money thereof, so long as in good faith the same have been or are about to be applied to the construction, alteration, or repair of such building, structure, or other improvement.

Laws Oreg., Feb. 11, 1885; Hill's Ann. Laws, s. 3680.

Sec. 274. **Definitions.** The words "building or other improvement," wherever the same are used in this chapter, shall be held to include and apply to any wharf, bridge, ditch, flume, tunnel, fence, machinery, aqueduct to create hydraulic power, or for mining or other purposes, and all other structures and superstructures, whenever the same can be made applicable thereto; and the words "construction, alteration, or repair," wherever the same are used herein, shall be held to include partial construction, and all repairs done in and upon any building or other improvement.

Laws Oreg., Feb. 11, 1885; Hill's Ann. Laws, s. 3681.

Sec. 275. **Existing liens and proceedings thereunder not impaired.** Nothing contained in this chapter shall affect any lien heretofore acquired, but the same may be enforced by the provisions of this chapter; and where actions are now pending the proceedings, after this chapter goes into effect, may be conducted according to this chapter.

Laws Oreg., Feb. 11, 1885; Hill's Ann. Laws, s. 3682.

CHAPTER TWENTY-NINE.

OF LIENS ON PERSONAL PROPERTY.

Sec.
276. Liens for labor on personal property.
277. Lien of carriers, storers of merchandise, and agisters of cattle.
278. Proceedings to enforce such liens.
279. Agreements not to be interfered with.
280. Lien for labor on logs.
281. Lien on lumber for labor performed thereon.
282. Lien for stumpage.
283. Preferred liens.
284. Limitation of lien for labor.
285. Limitation of lien for stumpage.
286. Filing claim and form thereof.
287. Filing claim for stumpage.
288. Record of claim.
289. Limitation for bringing suit.
290. Jurisdiction.
291. Against what timber lien may be enforced.
292. Joinder of liens.
293. Judgment lien; execution.
294. Sale when property is subject to loss or destruction.
295. Preventing the identification of timber subject to lien.

Sec. 276. **Liens of labor on personal property.** Any person who shall make, alter, repair, or bestow labor on any article of personal property at the request of the owner or lawful possessor thereof shall have a lien upon such property so made, altered, or repaired, or upon which labor had been bestowed, for his just and reasonable charges for the labor he has performed and the material he has furnished, and such person may hold and retain possession of the same until such just and reasonable charges shall be paid.

Laws Oreg., Oct. 21, 1878; Hill's Ann. Laws, s. 3683; 14 Oreg., 422; 19 ibid., 218.

Sec. 277. **Lien of carriers, storers of merchandise, and agisters of cattle.** Any person who is a common carrier, or who shall, at the request of the owner or lawful possessor of any personal property, carry, convey, or transport the same from one place to another, and any person who shall safely keep or store any grain, wares, merchandise, and personal property at the request of the owner or lawful possessor thereof, and any person who shall pasture or feed any horses, cattle, hogs, sheep, or other live stock, or bestow any labor, care, or attention upon the same at the request of the owner or lawful possessor thereof, shall have a lien upon such property for his just and reasonable charges for the labor, care, and attention he has bestowed and the food he has furnished, and he may retain possession of such property until such charges be paid.

Laws Oreg., Oct. 21, 1878; Hill's Ann. Laws, s. 3684.

Sec. 278. **Proceedings to enforce such liens.** If such just and reasonable charges be not paid within three months after the care, attention, and labor shall have been performed or bestowed, or the materials or food shall have been furnished, the person having such lien may proceed to sell at public auction the property mentioned in the last two sections, or a part thereof sufficient to pay such just and reasonable charges. Before selling, he shall give notice of such sale by advertisement for three weeks in a newspaper published in the precinct, if there be such publication, or by posting up notice of such sale in three public places in the precinct, one of which shall be the post-office or adjacent thereto, for three weeks before the time of such sale, and the proceeds of such sale shall be applied, first, to the discharge of such lien, and the costs of keeping and selling such property, and the remainder, if any, shall be paid over to the owner thereof: Provided, Nothing herein contained shall be construed as to authorize any warehouseman to sell more of any wool, wheat, oats, or other grain than sufficient to pay charges due the warehouseman on such wool, wheat, oats, or other grain: And provided further, If any such warehouseman shall sell, loan, or dispose of in any manner, contrary to the provisions of this chapter, without the consent of the owner thereof, any such wool, wheat, oats, or other grain, he shall, for each and every offense, forfeit and pay to the owner of such wool, wheat, oats, or other grain a sum equal to the market value thereof, and fifty per centum of the market value in addition as a penalty, the market value to be the price such article or articles bore at the time the owner thereof made demand on the warehouseman for the same.

Laws Oreg., Oct. 21, 1878; Hill's Ann. Laws, s. 3685.

Sec. 279. **Agreements not to be interfered with.** The provisions of the last three sections shall not interfere with any special agreement of the parties.

Laws Oreg., Oct. 21, 1878; Hill's Ann. Laws, s. 3686.

Sec. 280. **Lien for labor on logs.** Every person performing labor upon, or who shall assist in obtaining or securing, saw logs, spars, piles, or other timber shall have a lien upon the same for the work or labor done upon or in obtaining or securing the same, whether such work or labor was done at the instance of the owner of the same or his agent. The cook in a logging camp and any and all others who may assist in or about a logging camp shall be regarded as a person who assists in obtaining or securing the saw-logs, spars, piles, or other timber mentioned herein.

Laws Oreg., Feb. 20, 1891; Stat. 1891, p. 117.

Sec. 281. **Lien on lumber for labor performed thereon.** Every person performing labor upon or who shall assist in manufacturing saw logs or other timber into lumber has a lien upon such lumber while the same remains at

the yard wherein manufactured, whether such work or labor was done at the instance of the owner of such lumber or his agent.

Laws Oreg., Feb. 20, 1891; Stat. 1891, p. 117.

Sec. 282. **Lien for stumpage.** Any person who shall permit another to go upon his timber land and cut thereon saw logs, spars, piles, or other timber has a lien upon such logs, spars, piles, and timber for the price agreed to be paid for such privilege, or for the price such privilege or the stumpage thereon would be reasonably worth, in case there was no express agreement fixing the price.

Laws Oreg., Feb. 20, 1891; Stat. 1891, p. 117.

Sec. 283. **Preferred liens.** The liens provided for in this chapter are preferred liens and are prior to any and all other liens, and no sale, transfer, mortgage, or assignment of any saw logs, spars, piles, or other timber or manufactured lumber shall divert the lien thereon as herein provided.

Laws Oreg., Feb. 20, 1891; Stat. 1891, p. 117.

Sec. 284. **Limitation of lien for labor.** The person rendering the service or doing the work or labor named in sections two hundred and seventy-six and two hundred and seventy-seven of this chapter is only entitled to the liens as provided herein for services, work, or labor for the period of six months, or any part thereof next preceding the filing of the claims as provided in section two hundred and eighty-six of this title.

Laws Oreg., Feb. 20, 1891; Stat. 1891, p. 117.

Sec. 285. **Limitation of lien for stumpage.** The person granting the privilege mentioned in section two hundred and eighty-two of this title is only entitled to the lien as provided therein for saw logs, spars, piles, and other timber cut during the six months next preceding the filing of the claim as provided in section two hundred and eighty-six.

Laws Oreg., Feb. 20, 1891; Stat. 1891, p. 117.

Sec. 286. **Filing of claim and form thereof.** Every person, within thirty days after the rendition of the services, or after performing the work or labor mentioned in sections two hundred and seventy-six and two hundred and seventy-seven of this title, who shall claim the benefit hereof must file for record with the recorder of the precinct in which such saw logs, spars, piles, and other timber was cut, or in which such lumber was manufactured, a claim containing a statement of his demand, and the amount thereof, after deducting, as near as possible, all just credits and offsets, with the name of the person by whom he was employed, with a statement of the terms and conditions of his contract, if any; and in case there is no express contract, the claim shall state what such service, work, or labor is reasonably worth, and shall also contain a description of the property to be charged with the lien sufficient for identification with reasonable certainty, which claim must be verified by the oath of himself or some other person for him to the effect that the affiant believes the same to be true, which claim shall be substantially in the following form:

———, claimant, vs. ———, defendant.

Notice is hereby given that ——— claims a lien upon (describing property), being about ——— more or less, which were (cut or manufactured) in ——— precinct, district of Alaska, are marked thus ———, and are now lying in ———, for labor performed upon and assistance rendered in (cutting or manufacturing logs or lumber).

That the name of the owner, or reputed owner, is ———; that ——— em-

ployed said ——— to perform such labor and render such assistance upon the following terms and conditions (state contract, if any, or reasonable value); that said contract has been faithfully performed and fully complied with on the part of said ———, who performed labor and assisted in (cutting or manufacturing) for the period of ———; that said labor and assistance were so performed and rendered upon said property between the ——— day of ——— and the ——— day of ———, and the rendition of said service was closed on the ——— day of ———, and thirty days have not elapsed since that time; that the amount of claimant's demand for said services is ———; that no part thereof has been paid (except ———), and there is now due and remaining unpaid thereon, after deducting all just credits and offsets, the sum of ———, in which amount he claims a lien upon said property.

District of Alaska, }
Precinct of ———, } ss:

I, ———, being first duly sworn, on oath say that I am the ——— named in the foregoing claim; that I have heard the same read, know the contents thereof, and believe the same to be true.

———— ————.

Subscribed and sworn to before me this ——— day of ———.

———— ————.

Laws Oreg., Feb. 20, 1891; Stat. 1891, p. 117.

Sec. 287. **Filing claim for stumpage.** Every person mentioned in section two hundred and eighty claiming the benefit thereof must file for record with the recorder of the precinct in which such saw logs, spars, piles, and other timber was cut a claim, in substance the same as provided in section two hundred and eighty-six, and verified as therein provided.

Laws Oreg., Feb. 20, 1891; Stat. 1891, p. 117.

Sec. 288. **Record of claim.** The recorder must record every claim filed under the provisions of this title in books kept by him for that purpose, which records must be indexed as deeds and other conveyances are required by law to be indexed, and for which he may receive the same fees as are allowed by law for recording deeds or other instruments.

Laws Oreg., Feb. 20, 1891; Stat. 1891, p. 117.

Sec. 289. **Limitation for bringing suit.** No lien provided for in this chapter shall bind any saw logs, spars, piles, lumber, or other timber for a longer period than six months after the claim, as herein provided for, has been filed, unless a suit be commenced within that time to enforce the same; and no lien of any kind or character shall be had upon any lumber or logs after the same shall have been placed in any building or upon any spars or piles after the same shall have been put in use for the purpose for which they were intended.

Laws Oreg., Feb. 20, 1891; Stat. 1891, p. 117.

Sec. 290. **Jurisdiction.** The liens provided for in this chapter shall be enforced by an action, and shall be governed by the laws regulating the proceeding relating to the mode and manner of trial and the proceedings and laws to secure property so as to hold it for the satisfaction of any lien that may be against it.

Laws Oreg., Feb. 20, 1891; Stat. 1891, p. 117.

Sec. 291. **Against what timber lien may be enforced.** Any person who shall

bring an action to enforce a lien herein provided for, or any person having a lien as herein provided for, who shall be made a party to any such action, has a right to demand that such lien be enforced against the whole or any part of the saw logs, spars, piles, or other timber or manufactured lumber upon which he has performed labor, or which he has assisted in obtaining or securing, or which has been cut on his timber land during the six months mentioned in sections two hundred and eighty-four and two hundred and eighty-five, for all his labor upon or for all his assistance in obtaining or securing said logs, spars, or other timber, or in manufacturing said lumber during the whole or any part of the six months mentioned in section two hundred and eighty-four, or for timber cut during the whole or any part of the six months mentioned in section two hundred and eighty-five.

Laws Oreg., Feb. 20, 1891; Stat. 1891, p. 117.

Sec. 292. **Joinder of liens.** Any number of persons claiming liens under this title may join in the same action, and when separate actions are commenced the court may consolidate them. The court may also allow, as part of the costs, the moneys paid for filing and recording the claim, and a reasonable attorney's fee for each person claiming a lien.

Laws Oreg., Feb. 20, 1891; Stat. 1891, p. 117.

Sec. 293. **Judgment lien; execution.** In such action judgment must be rendered in favor of each person having a lien for the amount due him, and the court shall order any property subject to the lien herein provided for to be sold by the marshal in the same manner that personal property is sold on execution, and the court shall apportion the proceeds of such sale to the payment of each judgment pro rata, according to the amount of such judgment.

Laws Oreg., Feb. 20, 1891; Stat. 1891, p. 117.

Sec. 294. **Sale when property is subject to loss or destruction.** The judge of the court may, in vacation, upon motion, supported by affidavit showing that the property is liable to loss or destruction, order any property subject to a lien as in this title provided to be sold by the marshal as personal property is sold on execution before the judgment is rendered, as provided in section two hundred and ninety-three, and the proceeds of such sale must be retained by the marshal until judgment, to be applied as in the section directed.

Laws Oreg., Feb. 20, 1891; Stat. 1891, p. 117.

Sec. 295. **Preventing the identification of timber subject to lien.** Any person, firm, or corporation who shall injure, impair, or destroy, or who shall render difficult, uncertain, or impossible of identification any saw logs, spars, piles, or other timber, knowing the same to be subject to a lien, as herein provided, without the express consent of the person entitled to such lien, shall be liable to the lien holder for damages to the amount secured by his lien, which sum may be recovered by an action against such person, firm, or corporation, without bringing the suit as provided for in section three hundred and two (290) of this code: Provided, In all such actions the principal debtor shall be made a co-defendant.

Laws Oreg., Feb. 20, 1891; Stat. 1891, p. 117.

CHAPTER THIRTY.

OF UNCLAIMED PROPERTY.

Sec.
296. Consignee or depositary to enter receipt of property in book.
297. When bailee to notify owner of receipt of property.
298. When bailee may sell property.
299. Notice of sale, when to be given personally to owner.
300. Proceeding when property not claimed.
301. Inventory and order of sale.
302. Sale by marshal, notice of.
303. Return of marshal, and fees.
304. Commissioner to pay charges; balance to clerk of court.
305. Clerk to make entry.
306. Owner may claim and receive deposit from clerk within five years.
307. If proceeds not claimed.
308. Sale of decaying and perishable property.
309. Fees of commissioner and marshal.

Sec. 296. **Consignee or depositary to enter receipt of property in book.** Whenever any personal property shall be consigned to or deposited with any forwarding merchant, wharf, warehouse, or tavern keeper, or the keeper of any depot for the reception and storage of trunks, baggage, merchandise, or other personal property, such consignee or bailee shall immediately cause to be entered in a book kept by him a description of such property, with the date of reception thereof.

Laws Oreg., Jan. 26, 1854; Hill's Ann. Laws, s. 3712.

Sec. 297. **When bailee to notify owner of receipt of property.** If such property shall not have been left with such consignee or bailee for the purpose of being forwarded or disposed of or kept according to directions received by such consignee or bailee at or before the time of the reception thereof, and if the name and residence of the owner of such property be known to the person having such property in his possession, he shall immediately notify the owner, by letter directed to him and deposited in the post-office, of the reception of such property.

Laws Oreg., Jan. 26, 1854; Hill's Ann. Laws, s. 3713.

Sec. 298. **When bailee may sell property.** If any such property shall not be claimed and taken away within one year after the time it shall have been so received, the person having possession thereof may at any time thereafter proceed to sell the same in the manner provided in this chapter.

Laws Oreg., Jan. 26, 1854; Hill's Ann. Laws, s. 3714.

Sec. 299. **Notice of sale, when to be given personally to owner.** Before any such property shall be sold, if the name and residence of the owner thereof be known, at least sixty days' notice of such sale shall be given him, either personally or by leaving a notice at his residence or place of doing business; but if the name and residence of the owner be not known, or if service can not be made as above provided, the person having the possession of such property shall cause a notice to be published, containing a description of the property, for the space of six weeks successively in a newspaper if there be one published in the same precinct; if there be no newspaper published in the same precinct, then the notice shall be published in a newspaper nearest thereto in the district; the last publication of such notice shall be at least eighteen days previous to the time of sale.

Laws Oreg., Jan. 26, 1854; Hill's Ann. Laws, s. 3715.

Sec. 300. **Proceeding when property not claimed.** If the owner or person entitled to such property shall not take the same away and pay the charges

thereon within sixty days from the first publication or service of notice as above provided, it shall be the duty of the person having possession thereof, his agent or attorney, to make and deliver to the commissioner of the same precinct an affidavit setting forth a description of the property remaining unclaimed, the time of its reception, the publication or service of the notice, and whether the owner of such property be known or unknown.

Laws Oreg., Jan. 26, 1854; Hill's Ann. Laws, s. 3716.

Sec. 301. **Inventory and order of sale.** Upon the delivery to him of such affidavit the commissioner shall cause such property to be opened and examined in his presence, and a true inventory thereof to be made, and shall annex to such inventory an order under his hand that the property therein described be sold by the marshal at public auction.

Laws Oreg., Jan. 26, 1854; Hill's Ann. Laws, s. 3717.

Sec. 302. **Sale by marshal, notice of.** It shall be the duty of the marshal receiving such inventory and order to give ten days' notice of the sale, by posting up written notices thereof in three or more places in such precinct, one of which shall be the post-office, or immediately adjacent thereto, and to sell such property at public auction to the highest bidder, in the same manner as provided by law for sales under execution from commissioners.

Laws Oreg., Jan. 26, 1854; Hill's Ann. Laws, s. 3718.

Sec. 303. **Return of marshal, and fees.** Upon completing the sale the marshal making the same shall indorse upon the order aforesaid a return of his proceedings thereon, and return the same to the commissioner, together with the inventory and the proceeds of sale, after deducting his fees.

Laws Oreg., Jan. 26, 1854; Hill's Ann. Laws, s. 3719.

Sec. 304. **Commissioner to pay charges; balance to clerk of court.** From the proceeds of such sale the commissioner shall pay all legal charges that have been incurred in relation to such property, or a ratable proportion of each charge if the proceeds of the sale shall not be sufficient to pay all the charges; and the balance, if any there be, he shall immediately pay over to the clerk of the district court, and deliver a statement therewith containing a description of the property sold, the gross amount of such sale, and the amount of costs, charges, and expenses paid to each person.

Laws Oreg., Jan. 26, 1854; Hill's Ann. Laws, s. 3720.

Sec. 305. **Clerk to make entry.** The clerk of the district court shall make an entry of the amount received by him, and the time when received, and shall file in his office such statement so delivered to him by the commissioner.

Laws Oreg., Jan. 26, 1854; Hill's Ann. Laws, s. 3721.

Sec. 306. **Owner may claim and receive deposit from clerk within five years.** If the owner of the property sold, or his legal representatives, shall, at any time within five years after such moneys shall have been deposited with the clerk of the district court, furnish satisfactory evidence of the ownership of such property, he or they shall be entitled to receive from him the amount so deposited in his office.

Laws Oreg., Jan. 26, 1854; Hill's Ann. Laws, s. 3722.

Sec. 307. **If proceeds not claimed.** If the amount so deposited with the clerk of the district court shall not be claimed by the owner thereof or his legal representatives within the five years, the same shall belong to the United States.

Laws Oreg., Jan. 26, 1854; Hill's Ann. Laws, s. 3723.

Sec. 308. **Sale of decaying or perishable property.** Property of a perishable kind, and subject to decay by keeping, consigned or left in manner before mentioned, if not taken away within thirty days after it shall have been left, may be sold by giving ten days' notice thereof as provided in section three hundred and two; the sale to be conducted and the proceeds of the same to be applied in the manner before provided in this chapter: Provided, Any property in a state of decay, or that is manifestly liable immediately to become decayed, may be summarily sold by order of a commissioner, after inspection thereof, as provided in section three hundred and two of this chapter.

Laws Oreg., Jan. 26, 1854; Hill's Ann. Laws, s. 3724.

Sec. 309. **Fees of commissioner and marshal.** The fees allowed to any commissioner under the provisions of this chapter shall be three dollars for each day's service; and to any marshal, the same fees as are allowed by law for sale upon execution, and ten cents a folio for making an inventory of property.

Laws Oreg., Jan. 26, 1854; Hill's Ann. Laws, s. 3725.

CHAPTER THIRTY-ONE.

OF MORTGAGES OF PERSONAL PROPERTY.

Sec.
310. Chattels may be mortgaged.
311. Requisite to validity of chattel mortgage.
312. Mortgage by partnership.
313. Acknowledgment.
314. Filing of mortgage and duty of recorder.
315. When and how mortgage to be renewed.
316. Rights of subsequent mortgage.
317. Mode of attachment of mortgage chattels.
318. Certified copy in case of loss of original.
319. Extent of provisions of this chapter.
320. Foreclosure.
321. Satisfaction of mortgage.
322. Penalty for selling mortgaged chattels.
323. Mortgage on growing crops.

Sec. 310. **Chattels may be mortgaged.** Any interest in personal property which is capable of being transferred may be mortgaged.

Civil Code Mont., s. 3860; Eddy v. Lenny, 5 Mont., 502; Voss v. Whitney, 7 id., 385; Laubenhenner v. McDermott, 5 id., 552.

Sec. 311. **Requisite to validity of chattel mortgage.** A mortgage of personal property is void as against creditors of the mortgagor and subsequent purchasers and incumbrancers of the property in good faith for value, unless—

(1) The possession of such property be delivered to and retained by the mortgagee; or

(2) The mortgage provide that the property may remain in the possession of the mortgagor and be accompanied by an affidavit of all the parties thereto, or in case any party is absent from the precinct where such mortgage is executed, at the time of the execution thereof, an affidavit of those present, and of the agent or attorney in fact of such absent party, that the same is made in good faith, to secure the amount named therein, and without any design to hinder, delay, or defraud creditors, and be acknowledged and filed as hereinafter provided.

Civil Code Mont., s. 3861.

Sec. 312. **Mortgage by partnership.** Subject to the provisions of the next preceding section, one member of a firm of general partners may alone execute a mortgage of personal property and make the affidavit therein required

on behalf of the firm, and the mortgage so executed and the affidavit so made is as valid as if executed and made by all the partners, or their agent, or attorney in fact. In case of a corporation the president, secretary, or managing agent thereof may make the affidavit on its behalf.

Civil Code Mont., s. 3862.

Sec. 313. **Acknowledgment.** Every mortgage of personal property shall be acknowledged by the mortgagor or person executing the same, in the manner provided for the acknowledgment of conveyances of real property, before some officer authorized by law to take acknowledgments of deeds.

Civil Code Mont., s. 3863.

Sec. 314. **Filing of mortgage and duty of recorder.** Every mortgage of personal property, together with the affidavits of the parties thereto or a copy thereof, certified to be correct by the person before whom the acknowledgment has been made, must be filed in the office of the recorder of the precinct where the mortgagor resides and of the precinct where the property is at the time of the execution of the mortgage, or, in case he is not a resident of the district, then in the office of the recorder of the precinct where the property is at the time of the execution of the mortgage; and the recorder must, on receipt of such mortgage or copy, indorse thereon the time of receiving the same, and file and keep the same in his office for the inspection of all persons, and shall enter in a book, properly ruled and kept for that purpose, the names of all the parties—the names of the mortgagors to be alphabetically arranged—the consideration thereof, the date of its maturity, and the time of filing the same.

Civil Code Mont., s. 3864.

Sec. 315. **When and how mortgage to be renewed.** Every mortgage filed as provided in this chapter shall be void as against the creditors of the person making the same, or against subsequent purchasers or mortgagees in good faith, after the expiration of one year from the filing thereof, unless, within thirty days next preceding the expiration of the term of one year, a true copy of such mortgage, with a verified statement exhibiting the interest of the mortgagee in the property at the time the same is renewed, as claimed by virtue of such mortgage, is again filed in the office where the original was filed; and the effect of such renewal shall be to extend the lien of the mortgage as against the creditors, purchasers, and encumbrancers of the property for the further term of one year.

Bates Ann. Ohio Stats., s. 4155; Paine v. Mason, 7 O. S., 198; Biteler v. Baldwin, 42 ibid., 125; Cooper v. Koopes, 45 ibid., 625; In re Brocamp, 2 C. C., 372.

Sec. 316. **Rights of subsequent mortgagee.** Any subsequent mortgagee of personal property upon which a prior mortgage exists, which has been extended or renewed as provided in section three hundred and fifteen of this title, may, at any time during the existence of such mortgage, pay the amount of the debt and interest owing and secured thereby, as shown by such verified statement and mortgage, or deposit the full amount thereof with the recorder of the precinct wherein such verified statement and mortgage are filed, subject to the order of the mortgagee, his legal representatives or assigns, and the receipt or duplicate receipt for such payment or deposit shall be filed in the office and attached to said mortgage, and thereby such subsequent mortgagee shall be subrogated to all the rights of the prior mortgagee under such mortgage.

Civil Code Mont., s. 3868.

Sec. 317. **Mode of attachment of mortgaged chattels.** Personal property mortgaged may be taken on attachment or execution issued at the action of a creditor of the mortgagor; but before the property is so taken the officer must

pay or tender to the mortgagee, or the assignee thereof, the amount of the mortgaged debt and interest, or must deposit the amount thereof with the recorder of the precinct in which the mortgage is filed, payable to the order of the mortgagee, or the assignee thereof; and when the property then taken is sold under process the officer must apply the proceeds of the sale as follows:

(1) To the repayment of the sum paid to the mortgagee, or the assignee of said mortgage, with interest from the date of such payment; and

(2) The balance, if any, in like manner as the proceeds of sale under execution are applied in other cases.

Civil Code Mont., s. 3869.

Sec. 318. **Certified copy in case of loss of original.** A copy of any mortgage of personal property made, acknowledged, and filed as provided in this chapter, certified by the recorder in whose office the same shall be filed, may be read in evidence in any court in the district without further proof of the execution of the original, if the original be lost or out of the power of the person wishing to use it.

Civil Code Mont., s. 3870.

Sec. 319. **Extent of provisions of this chapter.** The provisions of the foregoing sections of this chapter shall extend to all such bills of sale, deeds of trust, and other conveyances of goods, chattels, or personal property as shall have the effect of a mortgage or lien upon such property.

Civil Code Mont., s. 3871.

Sec. 320. **Foreclosure.** An action for the foreclosure of a mortgage of personal property, or the enforcement of any lien thereon, of whatever nature, may be commenced and conducted in the same manner as provided by law for the foreclosure of mortgages and liens upon real property, and the same may be joined in an action for the recovery of the possession of the property mortgaged; but it is lawful for the mortgagor of personal property to insert in his mortgage a clause authorizing the marshal to execute the power of sale therein granted to the mortgagee, his legal representative and assigns, in which case the marshal, at the time of default, at the request of the mortgagee, must, and it is hereby made his duty to, advertise and sell the whole or any part of the mortgaged property, wherever it may be, and the mortgagee or his representative or assigns may, in good faith, purchase the property so sold, or any part thereof. The marshal may require an indemnity bond from the mortgagee or his assigns before taking possession of or selling the mortgaged property.

Civil Code Mont., s. 3872.

Sec. 321. **Satisfaction of mortgage.** Whenever the debt or obligation secured by any mortgage of personal property which has been filed in the office of the recorder as provided in this chapter shall be paid or discharged, an acknowledgment of satisfaction, signed by the mortgagee, his legal representative or assigns, must be indorsed upon the mortgage or copy thereof, filed as aforesaid, and the fact of such discharge or satisfaction noted by the recorder in the book kept by him as provided in section three hundred and fourteen of this title, opposite the names of the parties to such mortgage.

Civil Code Mont., s. 3874.

Sec. 322. **Penalty for selling mortgaged chattels.** Any person having conveyed any goods, chattels, or personal property to another by mortgage who shall, during the existence of the lien or title created by such mortgage, sell the property or any part thereof to a third party for a valuable consideration without informing him of the existence and effect of such mortgage shall forfeit and pay to the purchaser twice the value of such property so sold,

which forfeiture may be recovered in an action of debt in any court having jurisdiction thereof.

Civil Code Mont., s. 3875.

Sec. 323. **Mortgage on growing crops.** The lien of a mortgage on a growing crop continues on the crop after severance, whether remaining in its original state or converted into another product, so long as the same remains on the land of the mortgagor.

Civil Code Mont., s. 3876.

CHAPTER THIRTY-TWO.

OF LIMITED PARTNERSHIPS.

Sec.
324. Limited partnerships, for what purpose formed.
325. General and special partners, their liability and definition of.
326. Certificate for limited partnership, what to contain and where filed.
327. Certificate to be published; effect of false statement therein.
328. Limited partnership, how continued and renewed.
329. Effect of using name of special partner.
330. Capital stock not to be reduced during partnership.
331. Actions, etc., by and against members of partnership.
332. Dissolution of partnership, notice, how filed and published.
333. When to be considered general partners.

Sec. 324. **Limited partnerships, for what purpose formed.** Limited partnerships for the transaction of mercantile, mechanical, or manufacturing business may be formed within the district by two or more persons, upon the terms and subject to the conditions and limitations contained in this chapter.

Laws Oreg., Oct. 17, 1862; Hill's Ann. Laws, s. 3848.

Sec. 325. **General and special partners, their liability and definition of.** A limited partnership may consist of one or more persons, who are known and called general partners, and are jointly and severally liable as general partners now are by law, and of one or more persons who shall contribute to the common stock a specific sum in actual money as capital, and are known and called special partners, and are not personally liable for any debts of the partnership, except as in this chapter specially provided.

Laws Oreg., Oct. 17, 1862; Hill's Ann. Laws, s. 3849.

Sec. 326. **Certificate for limited partnership, what to contain and where filed.** The persons forming such partnerships shall make and severally subscribe a certificate in duplicate and file one of such certificates with the recorder of the precinct in which the principal place of business of the partnership is to be. Before being filed the execution of such certificate shall be acknowledged by each partner subscribing it before some officer authorized to take acknowledgments of deeds; and such certificate shall contain the name assumed by the partnership and under which its business is to be conducted, the names and respective places of residence of all the general and special partners, the amount of capital which each special partner has contributed to the common stock, the general nature of the business to be transacted, and the time when the partnership is to commence and when it is to terminate.

Laws Oreg., Oct. 17, 1862; Hill's Ann. Laws, s. 3850.

Sec. 327. **Certificate to be published; effect of false statement therein.** Such partnership can not commence before the filing of the certificate of partnership, and if a false statement is made in such certificate all the persons subscribing thereto are liable as general partners for all the debts of the partnership. The partners shall, for four successive weeks immediately after the filing of the certificate of partnership, publish a copy of the same in some newspaper published in the precinct where the principal place of business of the partnership is, or, if no such paper be published therein, then in some newspaper in general circulation therein, and until such publication is made and completed the partnership is to be deemed general.

Laws Oreg., Oct. 17, 1862; Hill's Ann. Laws, s. 3851.

Sec. 328. **Limited partnership, how continued and renewed.** A limited partnership may be continued or renewed by making, acknowledging, filing, and publishing a certificate thereof in the same manner provided in this chapter for the formation of such partnership originally; and every such partnership not renewed or continued as herein provided from and after the expiration thereof according to the original certificate shall be deemed a general partnership.

Laws Oreg., Oct. 17, 1862; Hill's Ann. Laws, s. 3852.

Sec. 329. **Effect of using name of special partner.** The business of the partnership shall be conducted under a name in which the names of the general partners only shall be inserted, without the addition of the word "company" or any other general term. If the name of any special partner is used in such firm with his consent or privity, he shall be deemed and treated as a general partner; or if he personally makes any contract respecting the concerns of the partnership with any person except the general partners, he shall be deemed and treated as a general partner in relation to such contract, unless he makes it appear that in making such contract he acted and was recognized as a special partner only.

Laws Oreg., Oct. 17, 1862; Hill's Ann. Laws, s. 3853.

Sec. 330. **Capital stock not to be reduced during partnership.** During the continuance of any partnership formed under this chapter no part of the capital stock thereof shall be withdrawn nor any division of interests or profits be made so as to reduce such capital stock below the sum stated in the certificate of partnership before mentioned; and if at any time during the continuance or at the termination of such partnership the property or assets thereof are not sufficient to satisfy the partnership debts, then the special partners shall be severally liable for all sums or amounts by them in any way received or withdrawn from such capital stock, with interest thereon from the time they were so received or withdrawn respectively.

Laws Oreg., Oct. 17, 1862; Hill's Ann. Laws, s. 3854.

Sec. 331. **Actions, etc., by and against members of partnership.** All actions or proceedings respecting the business of such partnership shall be prosecuted by and against the general partners only except in those cases where special partners or partnerships are to be deemed general partners or partnerships, in which case all the partners deemed general partners may join or be joined therein; and excepting also those cases where special partners are severally liable on account of sums or amounts received or withdrawn from the capital stock as provided in the preceding section.

Laws Oreg., Oct. 17, 1862; Hill's Ann. Laws, s. 3855.

Sec. 332. **Dissolution of partnership, notice, how filed and published.** No dissolution of a limited partnership shall take place except by operation of

law before the time specified in the certificate of partnership, unless a notice of such dissolution, subscribed by the general and special partners, is filed with the original certificate of partnership, or the certificate, if any, renewing or continuing such partnership, nor unless a copy of such notice be published for the time and in the manner prescribed for publication of the certificate of partnership.

Laws Oreg., Oct. 17, 1862; Hill's Ann. Laws, s. 3856.

Sec. 333. **When to be considered general partners.** In all cases not otherwise provided for in this chapter all the members of limited partnerships shall be subject to all the liabilities and entitled to all the rights of general partners.

Laws Oreg., Oct. 17, 1862; Hill's Ann. Laws, s. 3857.

CHAPTER THIRTY-THREE.

INJURY TO LIVE STOCK BY RAILROADS.

Sec.
334. Railway companies liable for killing stock, when.
335. What is lawful fencing of track.
336. Notice of animal killed or injured.
337. Penalty for failing to file notice.
338. Proof of killing or injury to be deemed conclusive evidence of negligence.
339. Service of summons in cases arising under the provisions of this chapter. Legal fence, definition of.

Sec. 334. **Railway companies liable for killing stock, when.** Any person, persons, company or corporation, or lessee or agent thereof, owning or operating any railroad within the district, shall be liable for the value of any horses, mules, colts, cows, bulls, calves, hogs, or sheep killed, and for reasonable damages for any injury to any such live stock upon or near any unfenced track of any railroad in the district, wherever such killing or injury is caused by any moving train or engine or cars upon such track. A substantial wire fence, four feet high, constructed with four strands of wire or its equivalent, shall be a legal fence.

Laws Oreg., Feb. 25, 1889; Hill's Ann. Laws, s. 4044; 17 Oreg., 619; 18 ibid., 388; 19 ibid., 320; ibid., 393.

Sec. 335. **What is lawful fencing of track.** No railroad track shall be deemed to be fenced within the meaning of this chapter unless such track is guarded by such fence against the entrance thereon of any such live stock on either side of the track, and not more than one hundred feet distant therefrom: Provided, Complete natural defenses against the entrance of such stock upon said track, such as natural walls or deep ditches, shall be deemed and held to be a fence within the meaning of this chapter, when the same, in connection with other and ordinary lawful fences, form a continuous guard and defense against the entrance of such live stock upon the track.

Laws Oreg., Feb. 21, 1887; ibid., s. 4045.

Sec. 336. **Notice of animal killed or injured.** Whenever any such live stock mentioned in section three hundred and thirty-four is so killed or injured upon the unfenced railroad track of any railroad in the district, the person, persons, company or corporation owning or operating such railroad, or his or their lessees or agents, or some proper and authorized agent or employee thereof, shall immediately cause to be filed a notice of such killing or injury by filing a concise description of the animal or animals so killed or injured, including

any and all brands, earmarks, or other marks of ownership, and if only injured, the nature of such injury, with the railroad agents at the two extremities of the section on which such killing or injury took place; the description shall be open to inspection at all reasonable hours of each week day for one month after such killing or injury took place.

Laws Oreg., Feb. 21, 1887; Hill's Ann. Laws, s. 4046.

Sec. 337. **Penalty for failing to file notice.** Any person, persons, company, or corporation, or his or their lessees or authorized agents, owning or operating any railroad within the district, who shall neglect or fail to file or cause to be filed the notice provided for in the preceding section, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined not exceeding two hundred dollars for each offense.

Laws Oreg., Feb. 21, 1887; Hill's Ann. Laws, s. 4047.

Sec. 338. **Proof of killing or injury to be deemed conclusive evidence of negligence.** In every action for the recovery of the value of any live stock mentioned in section three hundred and thirty-four so killed, or for damages for injury to the same, as hereinbefore provided, proof of such killing or injury shall of itself be deemed and held to be conclusive evidence of negligence upon the part of the person, persons, company, or corporation, or his or their lessees or agents, owning or operating such railroad: Provided, Contributory negligence on the part of the plaintiff in such action may be set up as a defence: But provided further, The allowing of stock to run at large upon common unfenced range or upon inclosed land owned or in possession of the owner of such stock shall not be deemed or held to be such contributory negligence: Provided further, In any such action, proof of willful intent on the part of the plaintiff therein to procure the killing or injury of any such stock in the manner aforesaid shall defeat the recovery of any damages for such killing or injury.

Laws Oreg., Feb. 21, 1887; Hill's Ann. Laws, s. 4048; 17 Oreg., 619; 19 Oreg., 292; ibid., 320.

Sec. 339. **Service of summons in cases arising under the provisions of this chapter.** In any action authorized by this code, service of summons or any other necessary process may be made upon any person, persons, company, or corporation, or his or their lessees or agents, owning or operating any railroad in the district, by personal service upon any authorized agent thereof residing or stationed in the precinct where such action is brought.

Laws Oreg., Feb. 21, 1887; Hill's Ann. Laws, s. 4049.

CHAPTER THIRTY-FOUR.

OF THE ESTABLISHMENT AND REGULATION OF FERRIES.

Sec.
340. Ferry license.
341. Payment therefor.
342. To whom license granted.
343. Notice of application for license.
344. Undertaking of applicant.
345. General duties of ferry keepers.
346. Commissioner to fix regular fare; penalty for illegal fare.
347. Commissioners may alter rates of fare.
348. List of rates to be posted up near ferry.
349. Persons to be ferried in the order of arrival; penalty for not.
350. Ferry keeper, exclusive right to transport.
351. How licenses to keep ferry forfeited.
352. Penalty for keeping ferry without license.

Sec. 340. **Ferry license.** The commissioner of any precinct in the district may grant a license to any person applying therefor to keep a ferry across

any lake or stream within his precinct, upon being satisfied that a ferry is necessary at the point applied for, which license shall continue in force for a term to be fixed by the commissioner, not exceeding five years: Provided, however, Nothing in this section shall be so construed as to empower the commissioner of any precinct in the district to grant a license for a ferry across any bay or arm of the sea.

Laws Oreg., Oct. 21, 1882; Hill's Ann. Laws, s. 4105.

Sec. 341. Payment therefor. The commissioner shall tax such sum as shall appear reasonable, not less than one nor more than one hundred dollars per annum, for such license; and the person to whom such license shall be granted shall pay to such commissioner the tax for one year in advance, taking his receipt therefor; and upon the payment of such license tax the commissioner shall issue such license under the seal of his office, and deposit the sum so received with the clerk of the district court, who shall turn the same, according to law, into the Treasury of the United States.

Laws Oreg., Oct. 21, 1882; Hill's Ann. Laws, s 4106.

Sec. 342. To whom license granted. Unless otherwise provided by law, no such license shall be granted to any person other than the owner of the land embracing or adjoining such lake or stream where the ferry is proposed to be kept, unless the landing place of such proposed ferry shall be on government land at the end of a street in an incorporated city or town, or unless the owner shall neglect to apply for such license; and whenever application shall be made for a license by any person other than such owner, the commissioner shall not grant the same unless proof be made that the applicant caused notice, in writing, of his intention to make such application to be given to such owner, if residing in the precinct, at least thirty days before the application before the commissioner is made, unless the landing place of such proposed ferry shall be at the end of a street in an incorporated city or town as aforesaid.

Laws Oreg., Oct. 21, 1882; Hill's Ann. Laws, s. 4107; 9 Oreg., 534.

Sec. 343. Notice of application for license. Every person intending to apply for a license to keep a ferry at any place shall give notice of such intention, by posting up notices in at least three public places in the neighborhood where the ferry is proposed to be kept, thirty days prior to the time when application shall be made: Provided, When application shall be made for the renewal of the license where the former license has expired, the same may be granted or renewed without previous notice or petition.

Laws Oreg., Jan. 27, 1854; Hill's Ann. Laws, s. 4108.

Sec. 344. Undertaking of applicant. Every person applying for a license to keep a ferry shall, before the same is issued, enter into a bond or undertaking to the United States, with one or more sureties, to be approved by the commissioner, in a sum not less than one hundred nor more than five hundred dollars, conditioned that such person will keep the ferry according to law, the bond to be filed in the office of the commissioner; and if default shall at any time be made in the condition of such bond or undertaking, damages, not exceeding the penalty, may be recovered by any person aggrieved.

Laws Oreg., Jan. 27, 1854; Hill's Ann. Laws, s. 4109.

Sec. 345. General duties of ferry keepers. Every person obtaining a license to keep a ferry shall provide and keep in good and complete repair the necessary boat or boats for the safe conveyance of all persons and property, and furnish such boats at all times with suitable oars, setting poles, and other implements necessary for the service thereof, and shall keep a sufficient num-

ber of discreet and skillful men to attend and manage the same; and he shall also at all times keep the place of embarking and landing in good order and repair by cutting away the bank of the lake or stream so that persons and property may be embarked and landed without danger or unnecessary delay.

Laws Oreg., Jan. 27, 1854; Hill's Ann. Laws, s. 4110.

Sec. 346. **Commissioner to fix regular fare; penalty for illegal fare.** Whenever the commissioner of any precinct shall grant a license to keep a ferry across any lake or stream he shall establish the rates of ferriage which may be lawfully demanded for the transportation of persons and property across the same, having due regard to the breadth and situation of the stream and the dangers and difficulties incident thereto, and the publicity of the place at which the same shall have been established; and every keeper of a ferry who shall at any time demand and receive more than the amount so designated for ferrying shall forfeit and pay to the party aggrieved for every such offence the sum of five dollars over and above the amount which shall have been illegally received, to be recovered before any commissioner having jurisdiction.

Laws Oreg., Jan. 27, 1854; Hill's Ann. Laws, s. 4112.

Sec. 347. **Commissioners may alter rates of fare.** The commissioners of the several precincts be (are), and they are hereby, authorized to fix, alter, and establish from time to time the rates of ferriage to be levied and collected at all ferries now established or hereafter to be established by law within or bordering upon the precinct lines of any of the precincts in said district.

Laws Oreg., Jan. 7, 1857; Hill's Ann. Laws, s. 4113.

Sec. 348. **List of rates to be posted up near ferry.** Every person licensed to keep a ferry shall post up in some conspicuous place near his ferry landing a written or printed list of the rates of ferriage which are chargeable by law at the ferry, which list of rates shall at all times be written in a plain, legible manner and posted up so near the place where persons shall pass across such ferry that the same may be easily read; and if at any time such keeper shall neglect or refuse to post and keep up such list it shall not be lawful to charge or take any ferriage or compensation at such ferry during the time of such delinquency.

Laws Oreg., Jan. 27, 1854; Hill's Ann. Laws, s. 4114.

Sec. 349. **Persons to be ferried in the order of arrival; penalty for not.** All persons shall be received into the ferryboats and conveyed across the stream over which such ferry shall be established according to their arrival at the same; and if any keeper of a ferry shall act contrary to this regulation he shall forfeit and pay the sum of three dollars for every such offense to the party aggrieved, to be recovered before any commissioner having jurisdiction: Provided, Public officers on urgent business, postriders, couriers, physicians, surgeons, and midwives shall in all cases be first carried over where all can not go at the same time.

Laws Oreg., Jan. 27, 1854; Hill's Ann. Laws, s. 4115.

Sec. 350. **Ferry keeper, exclusive right to transport.** Every person licensed to keep a ferry according to the provisions of this chapter shall have the exclusive privilege of transporting all persons and property over and across the stream where such is established, and shall be entitled to all the fare arising by law therefrom: Provided, Nothing herein contained shall be construed to prevent any person from crossing over such stream at such ferry in his own boat, or to take in and carry over his neighbor, when the same is

done without fee or charge, and not with intent to injure any person licensed to keep a ferry.

Laws Oreg., Jan. 27, 1854; Hill's Ann. Laws, s. 4116; 11 Oreg., 346.

Sec. 351. **How license to keep ferry forfeited.** If any person licensed to keep a ferry shall fail to pay the tax assessed thereon when due, or shall not provide and keep in good and complete repair the necessary boat or boats, with the oars, setting poles, and other necessary implements for the service thereof, or shall neglect to employ a sufficient number of skillful and discreet ferrymen, as is provided in section three hundred and forty-five of this title, within three months from the time license shall be granted; or if such ferry shall not at any time be kept in good condition and repair, agreeably to the provisions of this chapter; or if the same shall be abandoned, disused, or unfrequented for the space of six months at any one time, it shall be lawful for the commissioner of the proper precinct, on complaint being made in writing, to summon the person licensed to keep such ferry to show cause why such license should not be revoked, and to decide thereon according to the testimony adduced and the laws of the district, which decision when made shall be valid to all intents and purposes, subject to be reviewed by the district court: Provided, If any ferry shall be disused by reason of the stream over which the same is established being frozen or fordable at certain seasons of the year, or by reason of the travel being subject to periodical fluctuations, it shall not work a forfeiture within the meaning of this section.

Laws Oreg., Jan. 27, 1854; Hill's Ann. Laws, s. 4117.

Sec. 352. **Penalty for keeping ferry without license.** Any person who shall maintain any ferry and receive ferriage without first obtaining a license for the same shall pay a fine of ten dollars for each offense, to be collected for the use of the district by action before any commissioner having jurisdiction, and any person is hereby authorized to bring such action: Provided, It shall not be considered unlawful for any person to transport any other person or his property over any stream for hire when it shall be made evident that there is no ferry, or that the ferry established at such place was not in actual operation at the time, or in sufficient repair to have afforded to such person or his property a safe and speedy passage.

Laws Oreg., Jan. 27, 1854; Hill's Ann. Laws, s. 4118.

CHAPTER THIRTY-FIVE.

OF TRAVEL ON PUBLIC HIGHWAYS.

Sec.
353. Persons meeting on highway to turn to the right.
354. Penalty and damage for violation of preceding section.
355. Employer liable for wrongdoing of servant; action against the one a bar, etc.
356. Rules of travel for traction engines, etc.
357. Whistles not to be blown on highways and streets.
358. Driving steam engines over public bridge.
359. Penalty.

Sec. 353. **Persons meeting on highway to turn to the right.** Whenever any persons driving any vehicles shall meet on any public highway in the district, whether owned or kept by a corporation or private person, the persons so meeting shall seasonably turn their vehicles to the right of the center of

the road, so as to permit each vehicle to pass without interfering with or interrupting the other.

Laws Oreg., Oct. 17, 1862; Hill's Ann. Laws, s. 4133.

Sec. 354. **Penalty and damage for violation of preceding section.** If any person shall willfully violate the provisions of the preceding section, he shall forfeit and pay the sum of five dollars for every such violation to the party injured, to be recovered by a civil action, and such further damage in the same action as such party may directly sustain by reason of such violation.

Laws Oreg., Oct. 17, 1862; Hill's Ann. Laws, s. 4134.

Sec. 355. **Employer liable for wrongdoing of servant; action against the one a bar, etc.** Whenever any person driving a vehicle who shall violate the provisions of section three hundred and fifty-three is at the time in the employ of another, such other person is liable for the penalty herein provided the same as if he were the driver of such vehicle at the time of such violation; but an election to sue either the driver or employer is a bar to an action against the other.

Laws Oreg., Oct. 17, 1862; Hill's Ann. Laws, s. 4135.

Sec. 356. **Rules of travel for traction engines, etc.** It shall be the duty of any person or persons running or propelling or in charge of any portable or traction engine over the public highways in the district, to bring the portable or traction engine to a stop when within one hundred yards of any person or persons going in the opposite direction with a team or teams, and remain stationary until the team or teams shall have passed by.

Laws Oreg., Nov. 25, 1885; Hill's Ann. Laws, s. 4136.

Sec. 357. **Whistles not to be blown on highways and streets.** It shall be unlawful to blow the whistle of such portable or traction engines while upon the public highway or while passing over the streets of any city, town, or village in the district.

Laws Oreg., Nov. 25, 1885; Hill's Ann. Laws, s. 4137.

Sec. 358. **Driving steam engine over public bridge.** It shall be unlawful for any person or persons to drive any traction or portable engine of over two tons weight over any bridge or culvert on any public street or highway within the district without using on such bridge or culvert, for the purpose of securing its safety, four stout pieces of plank, each of which shall be at least ten feet in length, one foot in width, and two inches in thickness, two of the pieces of plank to be always under the wheels of the traction or portable engine while it shall be crossing the bridge or culvert.

Laws Oreg., Nov. 25, 1885; Hill's Ann. Laws, s. 4138.

Sec. 359. **Penalty.** The penalty for the violation of any of the provisions of the three preceding sections shall be a fine of not less than one dollar nor more than fifty dollars for each offense; and in addition to such fine, any person causing damage to the bridge or culvert shall be liable for all damages which may result from the crossing of such traction or portable engine.

Laws Oreg., Nov. 25, 1885; Hill's Ann. Laws, s. 4139.

CHAPTER THIRTY-SIX.

OF INSURANCE.

Sec.
360. What companies, etc., may transact business.
361. Service of process on insurance companies.
362. Fraternal and beneficial societies.
363. To whom above provisions apply.
364. Penalty for violations.
365. Fees for filing.
366. Form of oath.
367. Common law made applicable.
368. Conflicting acts repealed.

Sec. 360. **What companies, etc., may transact business.** No company, corporation, or association, or firm, or individual shall be permitted to transact a life, fire, or marine insurance business in the district until he or it has filed in the office of the secretary of the district a certificate by the secretary of state or other proper officer of some State of the United States, setting forth that the said company, corporation, association, firm, or individual has been qualified to carry on the business of insurance in the such State in accordance with the laws thereof.

Sec. 361. **Service of process on insurance companies.** No insurance company, corporation, association, firm or individual shall be permitted to transact a life, fire, or marine insurance business in the district until it shall have filed with the clerk of each division of the district court a power of attorney which shall set forth that such company is a corporation or duly organized insurer (naming the principal place of business of the company and principal place of business for the Pacific coast), which power of attorney shall authorize a citizen and resident of the district to receive and accept service in any proceeding in a court of justice of the district. If any attorney of any insurance company appointed under the provisions of this section shall remove from the district or become disqualified in any manner from accepting service, and if any citizen or resident of the district shall have any claim by virtue of any insurance policy issued by any such company not represented by attorney in the district, valid service may be made on such company by service on the clerk of the district court or any division thereof: Provided, In such case the clerk of the district court shall immediately notify such company and the principal agent for the Pacific coast, inclosing a copy of the service by mail, postpaid: And provided further, In such case no proceedings shall be had within sixty days after such service on the clerk.

Sec. 362. **Fraternal and beneficial societies.** All orders or secret societies, such as Masons, Odd Fellows, Druids, Knights of Pythias, Ancient Order of United Workmen, Modern Woodmen of America, and other benevolent, fraternal, or cooperative societies associated or incorporated for the sole purpose of mutual protection and relief of its members only, and for the payment of stipulated sums of money to the families of deceased members, or for property of its members only, destroyed by fire, are hereby declared not to be fire or insurance companies in the sense and meaning of this chapter, and they are exempt from the provisions hereof.

Sec. 363. **To whom above provisions apply.** The provisions of this chapter, under either term or designation of company, corporation, association, firm, or individual in either case, where either term or designation is used, shall apply to any insurer, company, corporation, association, firm, or individual engaged as insurers or who may hereafter engage as insurers in the

district, or who may engage in offering or affording indemnity against the casualties of fire or life.

Sec. 364. **Penalty for violations.** Any officer, agent, or employee of any insurance company or other person violating any of the provisions of this chapter shall be fined not less than one hundred nor more than five hundred dollars, and in default of payment of such fine shall be imprisoned not less than ten days nor more than six months.

Sec. 365. **Fees for filing.** The secretary of the district shall collect from each company or person, for the service provided in this chapter, the following fees: For filing certificate of qualification, five dollars; for filing power of attorney, five dollars; and the secretary shall account for the same in the manner provided by law in the case of other fees collected or received by them (him).

Sec. 366. **Form of oath.** Every officer in the district for whom a special oath is not provided by law shall, before entering upon the duties of his office, take and subscribe to the following oath:

I, ———, do solemnly swear (or affirm) that I will defend and support the Constitution of the United States, and perform all the duties of the office on which I am about to enter, and therein do equal right and justice to all men, so help me God.

Sec. 367. **Common law made applicable.** So much of the common law as is applicable and not inconsistent with the Constitution of the United States or with any law passed or to be passed by the Congress is adopted and declared to be law within the district of Alaska.

Sec. 368. **Conflicting acts repealed.** That in the interpretation of this Act words of the singular number shall be deemed to include their plurals, and that words of the masculine gender shall be deemed to include the feminine, as the case may be. Whenever a section of this Act refers to another section, a section of the same title is intended, unless the contrary clearly appears. No person shall be deprived of any existing legal right or remedy by reason of the passage of this Act, and all civil actions or proceedings commenced in the courts of the district before or within sixty days after the approval of this Act may be prosecuted to final judgment under the law now in force in the district, or under this Act. All Acts and parts of Acts in conflict with the provisions of this Act are hereby repealed.

Approved, June 6, 1900.

APPENDIX.

SECTIONS OF THE REVISED STATUTES RELATING TO ALASKA.

Sec. 1954. **Customs, etc., laws extended to Alaska.** The laws of the United States relating to customs, commerce, and navigation are extended to and over all the main-land, islands, and waters of the territory ceded to the United States by the Emperor of Russia by treaty concluded at Washington on the thirtieth day of March, anno Domini eighteen hundred and sixty-seven, so far as the same may be applicable thereto.

27 July, 1868, c. 273, s. 1, v. 15, p. 240.

Sec. 1955. **Importation and use of fire-arms and distilled spirits may be prohibited.** *The President shall have power to restrict and regulate or to prohibit the importation and use of fire-arms, ammunition and distilled spirits into and within the Territory of Alaska. The exportation of the same from any other port or place in the United States, when destined to any port or place in that Territory, and all such arms, ammunition and distilled spirits, exported or attempted to be exported from any port or place in the United States and destined for such Territory, in violation of any regulations that may be prescribed under this section, and all such arms, ammunition, and distilled spirits landed or attempted to be landed or used at any port or place in the Territory, in violation of such regulations, shall be forfeited; and if the value of the same exceeds four hundred dollars the vessel upon which the same is found, or from which they have been landed, together with her tackle, apparel, and furniture and cargo, shall be forfeited; and any person willfully violating such regulations shall be fined not more than five hundred dollars, or imprisoned not more than six months. Bonds may be required for a faithful observance of such regulations from the master or owners of any vessel departing from any port in the United States having on board fire-arms, ammunition, or distilled spirits, when such vessel is destined to any place in the Territory, or if not so destined, when there is reasonable grounds of suspicion that such articles are intended to be landed there in violation of law; and similar bonds may also be required on the landing of any such articles in the Territory from the person to whom the same may be consigned.* [*Repealed Sec. 142, Title I, Act of March 3, 1899, ante, p. 30.*]

27 July, 1868, c. 273, s. 4, v. 15, p. 241; The Louisa Simpson, 2 Saw., 57, U. S. v. Seveloff, 2 Saw., 311.

Sec. 1956. **Killing of fur-bearing animals prohibited.** No person shall kill any otter, mink, marten, sable, or fur-seal, or other fur-bearing animal within the limits of Alaska Territory, or in the waters thereof; and every person guilty thereof shall, for each offense, be fined not less than two hundred nor more than one thousand dollars, or imprisoned not more than six months, or both; and all vessels, their tackle, apparel, furniture and cargo, found engaged in violation of this section, shall be forfeited; but the Secretary of the Treasury shall have power to authorize the killing of any such mink, marten, sable, or other fur-bearing animal, except fur-seals, under such regulation as he may prescribe; and it shall be the duty of the Secretary to prevent the killing of any fur-seal, and to provide for the execution of the provisions of this section until it is otherwise provided by law; nor shall he

grant any special privileges under this section. (See Sec. 173, Part I, Act of March 3, 1899, ante, p. 37.)

27 July, 1868, c. 273, s. 6, v. 15, p. 246; In re Cooper, 143 U. S., 472; The Ocean Spray, 4 Saw. 105; U. S. v. Moseley, 8 Fed. Rep. 688; U. S. v. The James G. Swan, 50 Fed. Rep. 108; The Kodrak, 53 Fed. Rep. 126; The Alexander, 60 Fed. Rep. 914; La Ninfa, 73 Fed. Rep. 513; Nelson v. Pyramid, H. P. Co., 4 Wash. 689.

Sec. 1957. **What courts to have jurisdiction of offenses.** Until otherwise provided by law, all violations of this chapter, and of the several laws hereby extended to the Territory of Alaska and the waters thereof, committed within the limits of the same, shall be prosecuted in any district court of the United States in California or Oregon, or in the district courts of Washington; and the collector and deputy collectors appointed for Alaska Territory, and any person authorized in writing by either of them, or by the Secretary of the Treasury, shall have power to arrest persons and seize vessels and merchandise liable to fines, penalties, or forfeitures under this and the other laws extended over the Territory, and to keep and deliver the same to the marshal of some one of such courts; and such courts shall have original jurisdiction, and may take cognizance of all cases arising under this act and the several laws hereby extended over the Territory, and shall proceed therein in the same manner and with the like effect as if such cases had arisen within the district or Territory where the proceedings are brought. (See Part I, Act of March 3, 1899, ante, p. 37.)

27 July, 1868, c. 273, s. 7, v. 15, p. 241; 1 July, 1870, c. 189, s. 7, v. 16, p. 182.

Sec. 1958. **Remission of fines, etc.** In all cases of fine, penalty, or forfeiture, embraced in the act approved March third, seventeen hundred and ninety-seven, chapter thirteen, or mentioned in any act in addition to or amendatory of such act, that have occurred or may occur in the collection district of Alaska, the Secretary of the Treasury is authorized, if in his opinion the fine, penalty, or forfeiture was incurred without willful negligence or intention of fraud, to ascertain the facts in such manner and under such regulations as he may deem proper without regard to the provisions of the act above referred to, and upon the facts so to be ascertained, he may exercise all the power of remission conferred upon him by that act, as fully as he might have done had such facts been ascertained under and according to the provisions of that act. (See Sec. 175, Part I, Act of March 3, 1899, ante, p. 38.)

27 July, 1868, c. 273, s. 8, v. 15, p. 242.

Sec. 1959. **Saint Paul and Saint George Islands declared special reservations.** The islands of Saint Paul and Saint George, in Alaska, are declared a special reservation for Government purposes; and until otherwise provided by law it shall be unlawful for any person to land or remain on either of those islands, except by authority of the Secretary of the Treasury; and any person found on either of those islands contrary to the provisions hereof shall be summarily removed; and it shall be the duty of the Secretary of War to carry this section into effect. (See Sec. 176, Part I, Act of March 3, 1899, ante, p. 38; also, Acts of April 6, 1894, April 24, 1894, and Dec. 29, 1897.)

3 March, 1869, Res. No. 22, v. 15, p. 348.

Sec. 1960. **Killing of seal upon them prohibited except in certain months.** It shall be unlawful to kill any fur-seal upon the islands of Saint Paul and Saint George, or in the waters adjacent thereto, except during the months of June, July, September, and October in each year; and it shall be unlawful to kill such seals at any time by the use of fire-arms, or by other means tending to drive the seals away from those islands; but the natives of the islands shall have the privilege of killing such young seals as may be neces-

sary for their own food and clothing during other months, and also such old seals as may be required for their own clothing, and for the manufacture of boats for their own use; and the killing in such cases shall be limited and controlled by such regulations as may be prescribed by the Secretary of the Treasury. (See Sec. 177, Part I, Act of March 3, 1899, ante, p. 38, and acts above noted.)

1 July, 1870, c. 189, s. 1, v. 16, p. 180; 24 March, 1874, c. 64, v. 18, p. 24.

Sec. 1961. **Killing of certain seal prohibited.** It shall be unlawful to kill any female seal, or any seal less than one year old, at any season of the year, except as above provided; and it shall also be unlawful to kill any seal in the waters adjacent to the islands of Saint Paul and Saint George, or on the beaches, cliffs, or rocks where they haul up from the sea to remain; and every person who violates the provisions of this or the preceding section shall be punished for each offense by a fine of not less than two hundred dollars nor more than one thousand dollars, or by imprisonment not more than six months, or by both such fine and imprisonment; and all vessels, their tackle, apparel, and furniture, whose crews are found engaged in the violation of either this or the preceding section, shall be forfeited to the United States. (Ante, p. 38.)

1 July, 1870, c. 189, s. 2, v. 16, p. 180, R. S., s. 1961.

Sec. 1962. **Limit to number of seals to be killed.** For the period of twenty years from the first of July, eighteen hundred and seventy, the number of fur-seals which may be killed for their skins upon the island of Saint Paul is limited to seventy-five thousand per annum; and the number of fur-seals which may be killed for their skins upon the island of Saint George is limited to twenty-five thousand per annum; but the Secretary of the Treasury may limit the right of killing, if it becomes necessary for the preservation of such seals, with such proportionate reduction of the rents reserved to the Government as may be proper; and every person who knowingly violates either of the provisions of this section shall be punished as provided in the preceding section.

1 July, 1870, c. 189, s. 2, v. 16, p. 180; 24 March, 1874, c. 64, v. 18, p. 24.

Sec. 1963. **Right to take seal may be leased.** When the lease heretofore made by the Secretary of the Treasury to "The Alaska Commercial Company," of the right to engage in taking fur-seals on the islands of Saint Paul and Saint George, pursuant to the act of July first, eighteen hundred and seventy, chapter one hundred and eighty-nine, or when any future similar lease expires, or is surrendered, forfeited, or terminated, the Secretary shall lease to proper and responsible parties, for the best advantage of the United States, having due regard to the interests of the Government, the native inhabitants, their comfort, maintenance, and education, as well as to the interests of the parties heretofore engaged in trade and the protection of the fisheries, the right of taking fur-seals on the islands herein named, and of sending a vessel or vessels to the islands for the skins of such seal, for the term of twenty years, at an annual rental of not less than fifty thousand dollars, to be reserved in such lease and secure by a deposit of United States bonds to that amount; and every such lease shall be duly executed in duplicate, and shall not be transferable.

1 July, 1870, c. 189, ss. 4, 5, and 6, v. 16, pp. 180, 181.

Sec. 1964. **Bond.** The Secretary of the Treasury shall take from the lessees of such islands in all cases a bond, with securities, in a sum not less than five hundred thousand dollars, conditioned for the faithful observance

of all the laws and requirements of Congress, and the regulations of the Secretary of the Treasury, touching the taking of fur-seals and the disposing of the same, and for the payment of all taxes and dues accruing to the United States connected therewith.

1 July, 1870, c. 189, s. 5, v. 16, p. 181.

Sec. 1965. **Who may lease.** No persons other than American citizens shall be permitted, by lease or otherwise, to occupy the islands of Saint Paul and Saint George, or either of them, for the purpose of taking the skins of fur-seals therefrom, nor shall any foreign vessels be engaged in taking such skins; and the Secretary of the Treasury shall vacate and declare any lease forfeited if the same be held or operated for the use, benefit, or advantage, directly or indirectly, of any persons other than American citizens.

1 July, 1870, c. 189, s. 5, v. 16, p. 181.

Sec. 1966. **Covenants in lease.** Every lease shall contain a covenant on the part of the lessee that he will not keep, sell, furnish, give, or dispose of any distilled spirits or spirituous liquors on either of those islands to any of the natives thereof, such person not being a physician and furnishing the same for use as medicine; and every revenue officer, officially acting as such, on either of the islands, shall seize and destroy any distilled or spirituous liquors found thereon; but such officer shall make detailed reports of his doings in that matter to the collector of the port.

1 July, 1870, c. 189, s. 5, v. 16, p. 181.

Sec. 1967. **Penalty.** Every person who kills any fur-seal on either of those islands, or in the waters adjacent thereto, without authority of the lessees thereof, and every person who molests, disturbs, or interferes with the lessees, or either of them, or their agents or employes, in the lawful prosecution of their business, under the provisions of this chapter, shall for each offense be punished as prescribed in section nineteen hundred and sixty-one; and all vessels, their tackle, apparel, appurtenances, and cargo, whose crews are found engaged in any violation of the provisions of section nineteen hundred and sixty-five to nineteen hundred and sixty-eight, inclusive, shall be forfeited to the United States.

1 July, 1870, c. 189, s. 5, v. 16, p. 181.

Sec. 1968. **Penalty upon lessees.** If any person or company, under any lease herein authorized, knowingly kills, or permits to be killed, any number of seals exceeding the number for each island in this chapter prescribed, such person or company shall, in addition to the penalties and forfeitures herein provided, forfeit the whole number of the skins of seals killed in that year, or, in case the same have been disposed of, then such person or company shall forfeit the value of the same.

1 July, 1870, c. 189, s. 5, v. 16, p. 181.

Sec. 1969. **Tax upon seal skins.** In addition to the annual rental required to be reserved in every lease, as provided in section nineteen hundred and sixty-three, a revenue tax or duty of two dollars is laid upon each fur-seal skin taken and shipped from the islands of Saint Paul and Saint George, during the continuance of any lease, to be paid into the Treasury of the United States; and the Secretary of the Treasury is empowered to make all needful regulations for the collection and payment of the same, and to secure the comfort, maintenance, education, and protection of the natives of those islands,, and also to carry into full effect all the provisions of this chapter except as otherwise prescribed.

1 July, 1870, c. 189, s. 6, v. 16, p. 181.

Sec. 1970. **Lease may be terminated.** The Secretary of the Treasury may terminate any lease given to any person, company, or corporation on full and satisfactory proof of the violation of any of the provisions of this chapter or the regulations established by him.

1 July, 1870, c. 189, s. 6, v. 16, p. 182.

Sec. 1971. **Lessees to furnish copies to masters of their vessels.** The lessees shall furnish to the several masters of vessels employed by them certified copies of the lease held by them respectively, which shall be presented to the Government revenue-officer for the time being who may be in charge at the islands as the authority of the party for landing and taking skins.

1 July, 1870, c. 189, s. 4, v. 16, p. 180.

Sec. 1972. **Certain sections may be altered.** Congress may at any time hereafter, alter, amend, or repeal sections from nineteen hundred and sixty to nineteen hundred and seventy-one, both inclusive, of this chapter.

1 July, 1870, c. 189, s. 8, v. 16, p. 182.

Sec. 1973. **Agents and assistants to manage seal fisheries.** The Secretary of the Treasury is authorized to appoint one agent and three assistant agents, who shall be charged with the management of the seal fisheries in Alaska, and the performance of such other duties as may be assigned to them by the Secretary of the Treasury.

5 March, 1872, c. 31, s. 1, v. 17, p. 35; 31 July, 1876, c. 246, v. 19, p. 118.

Sec. 1974. **Their pay, etc.** The agent shall receive the sum of ten dollars each day, one assistant agent the sum of eight dollars each day, and two assistant agents the sum of six dollars each day while so employed; and they shall also be allowed their necessary traveling expenses in going to and returning from Alaska, for which expenses vouchers shall be presented to the proper accounting officers of the Treasury, and such expenses shall not exceed in the aggregate six hundred dollars each in any one year.

5 March, 1872, c. 31, s. 1, v. 17, p. 35; 3 March, 1875, c. 130, v. 18, p. 375.

Sec. 1975. **Not to be interested in right to take seals.** Such agents shall never be interested, directly or indirectly, in any lease of the right to take seals, nor in any proceeds or profits thereof, either as owner, agent, partner, or otherwise.

5 March, 1872, c. 31, s. 1, v. 17, p. 35.

Sec. 1976. **Agents may administer certain oaths and take testimony.** Such agents are empowered to administer oaths in all cases relating to the service of the United States, and to take testimony in Alaska for the use of the Government in any matter concerning the public revenues.

5 March, 1872, c. 31, s. 3, v. 17, p. 35.

Sec. 2591. **Collection District of Alaska.** There shall be in the Territory of Alaska one collection-district, as follows:

The district of Alaska; to comprise all the Territory of Alaska; in which Sitka shall be the port of entry. (Repealed, 29 Stat. L. 60, chap. 58, post, p. 451.)

27 July, 1868, c. 273, s. 2, v. 15, p. 240.

Sec. 2592. **Officer in Alaska.** There shall be in the collection-district of Alaska a collector, who shall reside at Sitka. (Repealed, 29 Stat. L. 60, Chap. 58, post, p. 451.)

27 July, 1868, c. 273, s. 2, v. 15, p. 240.

Sec. 4140. **Nationalization of vessels in Alaska.** The Secretary of the Treasury may make such regulations as he may deem expedient, for the nationalization of all vessels owned by actual residents of the Territory of Alaska, on the twentieth day of June, eighteen hundred and sixty-seven, and which continued to be so owned up to the date of such nationalization.

27 July, 1868, c. 273, s. 3, v. 15, p. 240.

Sec. 4358. **Trade between Alaska and other districts.** The coasting trade between the territory ceded to the United States by the Emperor of Russia and any other portion of the United States shall be regulated in accordance with the provisions of law applicable to such trade between any two great districts.

27 July, 1868, c. 273, s. 5, v. 15, p. 241.

Sec. 5293. **Remission of fines, etc.** The Secretary of the Treasury is authorized to prescribe such rules and modes of proceeding to ascertain the facts upon which an application for remission of a fine, penalty, or forfeiture is founded, as he deems proper, and, upon ascertaining them, to remit the fine, penalty, or forfeiture, if in his opinion it was incurred without willful negligence or fraud, in either of the following cases:

* * * * *

Fifth. If the fine, penalty, or forfeiture was imposed by authority of any provisions of law for levying or collecting any duties or taxes, or relating to registering, recording, enrolling, or licensing vessels, and the case arose within the collection-district of Alaska, or was imposed by virtue of any provisions of law relating to fur-seals upon the islands of Saint Paul and Saint George.

14 July, 1832, c. 233, v. 4, p. 597; 18 July, 1866, c. 201, s. 16, v. 14, p. 182; 27 July, 1868, c. 273, ss. 8, 9, v. 15, p. 224; 1 July, 1870, c. 189, s. 7, v. 16, p. 182.

LAWS SUBSEQUENT TO THE REVISED STATUTES.

[18 Stat. L. 24, Chap. 64.]

AN ACT to amend the act entitled "An act to prevent the extermination of fur-bearing animals in Alaska," approved July first eighteen hundred and seventy.

Time of taking seals on St. Paul and St. George islands, and number. Be it enacted, etc., That the act entitled "An act to prevent the extermination of fur-bearing animals in Alaska," approved July first, eighteen hundred and seventy, is hereby amended so as to authorize the Secretary of the Treasury, and he is hereby authorized, to designate the months in which fur-seals may be taken for their skins on the islands of Saint Paul and Saint George, in Alaska, and in the waters adjacent thereto, and the number to be taken on or about each island respectively.

Approved, March 24, 1874.

R. S., ss. 1960, 1972; 2 March, 1889, ch. 415; 3 March, 1891, ch. 561, s. 14.

[18 Stat. L. 33, Chap. 122.]

AN ACT to enable the Secretary of the Treasury to gather authentic information as to the condition and importance of the fur-trade in the Territory of Alaska.

Special agent to report on condition of seal-fisheries, etc. Be it enacted, etc., That the Secretary of the Treasury be, and he is hereby, authorized to appoint some person qualified by experience and education a special agent for the purpose of visiting the various trading stations and Indian villages in the

Territory of Alaska, the seal islands, and the large islands to the north of them, in Behring sea, for the purpose of collecting and reporting to him all possible authentic information upon the present condition of the seal fisheries of Alaska; the haunts and habits of the seal, and the preservation and extension of the fisheries as a source of revenue to the United States; together with like information respecting the fur-bearing animals of Alaska generally, the statistics of the fur-trade, and the condition of the people or natives, especially those upon whom the successful prosecution of the fisheries and fur-trade is dependent; such agent to receive as compensation eight dollars per day while actually thus employed, with all actual and necessary traveling expenses incurred therein: Provided, That the appointment made under this act shall not continue longer than two years. That the Secretary of the Navy be, and he is hereby, authorized to detail an officer of the Navy to go in connection with the person above mentioned, who shall be charged with the same duties and shall make a like report upon all subjects therein named; and shall also inquire and report whether the contracts as to the seal fisheries have been complied with by the persons or company now in possession; and whether said contracts can be safely extended.

Approved, April 22, 1874.

[20 Stat. L. 47, Chap. 78.]

AN ACT to provide for the administration of the oath of office to collectors and other officers of the customs in the district of Alaska.

Oath of customs officers. Be it enacted, etc., That until the formal organization of the Territory of Alaska, the oath of office required by law to be taken by a collector or other officer of the customs in Alaska may be taken before the judge of any circuit or district court of the United States.

Approved, May 2, 1878.

[23 Stat. L. 24, Chap. 53.]

AN ACT providing a civil government for Alaska.

(See Part III, ante, p. 131.)

Alaska, a civil and judicial district; seat of government. Be it enacted, etc., That the territory ceded to the United States by Russia by the treaty of March thirtieth, eighteen hundred and sixty-seven, and known as Alaska, shall constitute a civil and judicial district, the government of which shall be organized and administered as hereinafter provided. The temporary seat of government of said district is hereby established at Sitka.

R. S., ss. 1954, 1976.

Sec. 2. Governor to be appointed; powers and duties. That there shall be appointed for the said district a governor, who shall reside therein during his term of office and be charged with the interests of the United States Government that may arise within said district. To the end aforesaid he shall have authority to see that the laws enacted for said district are enforced, and to require the faithful discharge of their duties by the officials appointed to administer the same. He may also grant reprieves for offenses committed against the laws of the district or of the United States until the decision of the President thereon shall be made known. He shall be ex officio commander-in-chief of the militia of said district, and shall have power to call out the same when necessary to the due execution of the laws and to preserve the peace, and to cause all able-bodied citizens of the United States in said district to enroll and serve as such when the public exigency demands; and he shall perform generally in and over said district such acts as pertain to the office of

governor of a territory, so far as the same may be made or become applicable thereto. He shall make an annual report, on the first day of October in each year, to the President of the United States, of his official acts and doings, and of the condition of said district, with reference to its resources, industries, population, and the administration of the civil government thereof. And the President of the United States shall have power to review and to confirm or annul any reprieves granted or other acts done by him.

Sec. 3. **District court, jurisdiction.** That there shall be, and hereby is, established a district court for said district, with the civil and criminal jurisdiction of district courts of the United States, and the civil and criminal jurisdiction of district courts of the United States exercising the jurisdiction of circuit courts, and such other jurisdiction, not inconsistent with this act, as may be established by law; and a district judge shall be appointed for said district, who shall during his term of office reside therein and hold at least two terms of said court therein in each year, one at Sitka, beginning on the first Monday in May, and the other at Wrangel, beginning on the first Monday in November. He is also authorized and directed to hold such special sessions as may be necessary for the dispatch of the business of said court, at such times and places in said district as he may deem expedient, and may adjourn such special session to any other time previous to a regular session. He shall have authority to employ interpreters, and to make allowances for the necessary expenses of his court.

R. S., ss. 563, 571, 629, 649; 22 Ct. Cls. 317, 141 U. S. 174.

Sec. 4. **Clerk, district attorney and marshal.** That a clerk shall be appointed for said court, who shall be ex officio secretary and treasurer of said district, a district attorney, and a marshal, all of whom shall during their terms of office reside therein. The clerk shall record and preserve copies of all the laws, proceedings, and official acts applicable to said district. He shall also receive all moneys collected from fines, forfeitures, or in any other manner except from violations of the custom laws, and shall apply the same to the incidental expenses of the said district court and the allowances thereof, as directed by the judge of said court, and shall account for the same in detail, and for any balances on account thereof, quarterly, to and under the direction of the Secretary of the Treasury. He shall be ex officio recorder of deeds and mortgages and certificates of location of mining claims and other contracts relating to real estate and register of wills for said district, and shall establish secure offices in the towns of Sitka and Wrangel, in said district, for the safekeeping of all his official records, and of records concerning the reformation and establishment of the present status of titles to lands, as hereinafter directed: Provided, That the district court hereby created may direct, if it shall deem it expedient, the establishment of separate offices at the settlements of Wrangel, Oonalashka, and Juneau City, respectively, for the recording of such instruments as may pertain to the several natural divisions of said district most convenient to said settlements, the limits of which shall, in the event of such direction, be defined by said court; and said offices shall be in charge of the commissioners respectively as hereinafter provided.

Sec. 5. **Four commissioners to be appointed.** That there shall be appointed by the President four commissioners in and for the said district who shall have the jurisdiction and powers of commissioners of the United States circuit courts in any part of said district, but who shall reside, one at Sitka, one at Wrangel, one at Oonalashka, and one at Juneau City. Such commissioners shall exercise all the duties and powers, civil and criminal, now conferred on justices of the peace under the general laws of the State of Oregon, so far as the same may be applicable in said district, and may not be in con-

flict with this act or the laws of the United States. They shall also have jurisdiction, subject to the supervision of the district judge, in all testamentary and probate matters, and for this purpose their courts shall be opened at stated terms and be courts of record, and be provided with a seal for the authentication of their official acts. They shall also have power to grant writs of habeas corpus for the purpose of inquiring into the cause of restraint of liberty, which writs shall be made returnable before the said district judge for said district; and like proceedings shall be had thereon as if the same had been granted by said judge under the general laws of the United States in such cases. Said commissioners shall also have the powers of notaries public, and shall keep a record of all deeds and other instruments of writing acknowledged before them and relating to the title to or transfer of property within said district, which record shall be subject to public inspection. Said commissioners shall also keep a record of all fines and forfeitures received by them, and shall pay over the same quarterly to the clerk of said district court. The governor appointed under the provisions of this act shall, from time to time, inquire into the operations of the Alaska Seal and Fur Company, and shall annually report to Congress the result of such inquiries and any and all violations by said company of the agreement existing between the United States and said company.

R. S., ss. 627, 1014; R. S., ss. 751, 752.

Sec. 6. **Marshal's powers.** That the marshal for said district shall have the general authority and powers of the United States marshals of the States and Territories. He shall be the executive officer of said court, and charged with the execution of all process of said court and with the transportation and custody of prisoners, and he shall be ex officio keeper of the jail or penitentiary of said district. He shall appoint four deputies, who shall reside severally at the towns of Sitka, Wrangel, Oonalashka, and Juneau City, and they shall respectively be ex officio constables and executive officers of the commissioners' courts herein provided, and shall have the powers and discharge the duties of United States deputy marshals, and those of constables under the laws of the State of Oregon now in force.

R. S., ss. 786—788.

Sec. 7. **Laws of Oregon adopted, etc.** That the general laws of the State of Oregon now in force are hereby declared to be the law in said district, so far as the same may be applicable and not in conflict with the provisions of this act or the laws of the United States; and the sentence of imprisonment in any criminal case shall be carried out by confinement in the jail or penitentiary hereinafter provided for. But the said district court shall have exclusive jurisdiction in all cases in equity or those involving a question of title to land, or mining rights, or the constitutionality of a law, and in all criminal offenses which are capital. In all civil cases, at common law, any issue of fact shall be determined by a jury, at the instance of either party; and an appeal shall lie in any case, civil or criminal, from the judgment of said commissioners to the said district court where the amount involved in any civil case is two hundred dollars or more, and in any criminal case where a fine of more than one hundred dollars or imprisonment is imposed, upon the filing of a sufficient appeal bond by the party appealing, to be approved by the court or commissioner. Writs of error in criminal cases shall issue to the said district court from the United States circuit court for the district of Oregon in the cases provided in chapter one hundred and seventy-six of the laws of eighteen hundred and seventy-nine; and the jurisdiction thereby conferred upon circuit courts is hereby given to the circuit court of Oregon. And the final judgments or decrees

of said circuit and district court may be reviewed by the Supreme Court of the United States as in other cases.

29 Fed. Rep. 689; 30 Fed. Rep. 113; 27 Fed. Rep., 351.

Sec. 8. **Land district.** That the said district of Alaska is hereby created a land district, and a United States land-office for said district is hereby located at Sitka. The commissioner provided for by this act to reside at Sitka shall be ex officio register of said land-office, and the clerk provided for by this act shall be ex officio receiver of public moneys and the marshal provided for by this act shall be ex officio surveyor-general of said district and the laws of the United States relating to mining claims, and the rights incident thereto, shall, from and after the passage of this act, be in full force and effect in said district, under the administration thereof herein provided for, subject to such regulations as may be made by the Secretary of the Interior, approved by the President: Provided, That the Indians or other persons in said district shall not be disturbed in the possession of any lands actually in their use or occupation or now claimed by them but the terms under which such persons may acquire title to such lands is reserved for future legislation by Congress: And provided further, That parties who have located mines or mineral privileges therein under the laws of the United States applicable to the public domain, or who have occupied and improved or exercised acts of ownership over such claims, shall not be disturbed therein, but shall be allowed to perfect their title to such claims by payment as aforesaid: And provided also, That the land not exceeding six hundred and forty acres at any station now occupied as missionary stations among the Indian tribes in said section, with the improvements thereon erected by or for such societies, shall be continued in the occupancy of the several religious societies to which said missionary stations respectively belong until action by Congress. But nothing contained in this act shall be construed to put in force in said district the general land laws of the United States. [*Amended, 30 Stat. L. 215, chap. 14, post p. 452.*]

Sec. 9. **Appointment of officers, etc.** That the governor, attorney, judge, marshal, clerk, and commissioners provided for in this act shall be appointed by the President of the United States, by and with the advice and consent of the Senate, and shall hold their respective offices for the term of four years, and until their successors are appointed and qualified. They shall severally receive the fees of office established by law for the several offices the duties of which have been hereby conferred upon them, as the same are determined and allowed in respect of similar offices under the laws of the United States, which fees shall be reported to the Attorney-General and paid into the Treasury of the United States. They shall receive respectively the following annual salaries. The governor, the sum of three thousand dollars; the attorney, the sum of two thousand five hundred dollars; the marshal, the sum of two thousand five hundred dollars; the judge, the sum of three thousand dollars; and the clerk, the sum of two thousand five hundred dollars, payable to them quarterly from the Treasury of the United States. The district judge, marshal, and district attorney shall be paid their actual necessary expenses when traveling in the discharge of their official duties. A detailed account shall be rendered of such expenses under oath and as to the marshal and district attorney such account shall be approved by the judge, and as to his expenses by the Attorney-General. The commissioners shall receive the usual fees of United States commissioners and of justices of the peace for Oregon, and such fees for recording instruments as are allowed by the laws of Oregon for similar services, and in addition a salary of one thousand dollars each. The deputy marshals, in addition to the usual fees of constables in Oregon, shall receive each a salary of seven hundred and fifty dollars, which salaries

shall also be payable quarterly out of the Treasury of the United States. Each of said officials shall, before entering on the duties of his office, take and subscribe an oath that he will faithfully execute the same, which said oath may be taken before the judge of said district or any United States district or circuit judge. That all officers appointed for said district, before entering upon the duties of their offices, shall take the oaths required by law and the laws of the United States, not locally inapplicable to said district and not inconsistent with the provisions of this act are hereby extended thereto; but there shall be no legislative assembly in said district, nor shall any delegate be sent to Congress therefrom. And the said clerk shall execute a bond, with sufficient sureties, in the penalty of ten thousand dollars, for the faithful performance of his duties, and file the same with the Secretary of the Treasury before entering on the duties of his office; and the commissioners shall each execute a bond, with sufficient sureties, in the penalty of three thousand dollars, for the faithful performance of their duties, and file the same with the clerk before entering on the duties of their office.

Sec. 10. **Public buildings.** That any of the public buildings in said district not required for the customs service or military purposes shall be used for court-rooms and offices of the civil government; and the Secretary of the Treasury is hereby directed to instruct and authorize the custodian of said buildings forthwith to make such repairs to the jail in the town of Sitka, in said district, as will render it suitable for a jail and penitentiary for the purposes of the civil government hereby provided, and to surrender to the marshal the custody of said jail and the other public buildings, or such parts of said buildings as may be selected for court-rooms, offices, and officials.

Sec. 11. **Compilation of laws.** That the Attorney-General is directed forthwith to compile and cause to be printed, in the English language, in pamphlet form, so much of the general laws of the United States as is applicable to the duties of the governor, attorney, judge, clerk, marshals, and commissioners appointed for said district, and shall furnish for the use of the officers of said Territory so many copies as may be needed of the laws of Oregon applicable to said district.

Sec. 12. **Commissioners to examine condition of Indians, lands, etc.** That the Secretary of the Interior shall select two of the officers to be appointed under this act, who, together with the governor, shall constitute a commission to examine into and report upon the condition of the Indians residing in said Territory, what lands, if any, should be reserved for their use, what provision shall be made for their education what rights by occupation of settlers should be recognized, and all other facts that may be necessary to enable Congress to determine what limitations or conditions should be imposed when the land laws of the United States shall be extended to said district; and to defray the expenses of said commission the sum of two thousand dollars is hereby appropriated out of any moneys in the Treasury not otherwise appropriated.

Sec. 13. **Education of children.** That the Secretary of the Interior shall make needful and proper provision for the education of the children of school age in the Territory of Alaska, without reference to race, until such time as permanent provision shall be made for the same, and the sum of twenty-five thousand dollars, or so much thereof as may be necessary is hereby appropriated for this purpose.

Sec. 14. **Existing laws to remain in force, except.** That the provisions of chapter three, title twenty-three, of the Revised Statutes of the United States, relating to the unorganized Territory of Alaska, shall remain in full force, ex-

cept as herein specially otherwise provided; *and the importation, manufacture, and sale of intoxicating liquors in said district except for medicinal, mechanical and scientific purposes is hereby prohibited under the penalties which are provided in section nineteen hundred and fifty-five of the Revised Statutes for the wrongful importation of distilled spirits. And the President of the United States shall make such regulations as are necessary to carry out the provisions of this section.* [*Repealed, ante p. 30.*]

Approved, May 17, 1884.

30 Fed. Rep., 114.

[25 Stat. L. 1009, Chap. 415.]

AN ACT to provide for the protection of the salmon fisheries of Alaska.

[This act was amended and re-enacted by 29 Stat. L. 316, Chap. 387, and the amended act constitutes sections 179 to 183, inclusive, of the Penal Code, ante, p. 39.]

[26 Stat. L. 1087, Chap. 552.]

AN ACT to establish certain ports of delivery in Alaska Territory.

Ports of delivery established. Be it enacted, etc., That Mary Island, Wrangel, Juneau, Sand Point, Kodiak, and Ounalaska be, and the same are hereby, constituted ports of delivery within the collection district of Alaska. The Secretary of the Treasury may designate customs officers to be stationed at each of said ports with authority to enter and clear vessels, receive duties, fees, and other moneys, and perform such other services as in his judgment the exigencies of commerce may require.

R. S., ss. 2591, 2592.

Sec. 2. **Buildings at Mary Island and Sand Point.** That the Secretary of the Treasury be, and is hereby, authorized to provide the necessary buildings for the transaction of the public business at Mary Island and Sand Point at a cost not to exceed in the aggregate fifteen thousand dollars, which sum is hereby appropriated for the purpose.

Approved March 3, 1891.

[26 Stat. L. 1095, Chap. 561.]

AN ACT to repeal timber culture laws, and for other purposes.

* * * * *

Sec. 11. **Town sites, how entered.** That until otherwise ordered by Congress lands in Alaska may be entered for town-site purposes, for the several use and benefit of the occupants of such town sites, by such trustee or trustees as may be named by the Secretary of the Interior for that purpose, such entries to be made under the provisions of section twenty-three hundred and eighty-seven of the Revised Statutes as near as may be; and when such entries shall have been made the Secretary of the Interior shall provide by regulation for the proper execution of the trust in favor of the inhabitants of the town-site, including the survey of the land into lots, according to the spirit and intent of said section twenty-three hundred and eighty-seven of the Revised Statutes, whereby the same results would be reached as though the entry had been made by a county judge and the disposal of the lots in such town site and the proceeds of the sale thereof has been prescribed by the legislative authority of a State or Territory: Provided, That no more than six hundred and forty acres shall be embraced in one town site entry.

R. S., ss. 2380, 2394.

Sec. 12. **Purchase for trade or manufacture.** That any citizen of the United States twenty-one years of age, and any association of such citizens, and any corporation incorporated under the laws of the United States, or of any State or Territory of the United States now authorized by law to hold lands

in the Territories now or hereafter in possession of and occupying public lands in Alaska for the purpose of trade or manufactures, may purchase not exceeding one hundred and sixty acres to be taken as near as practicable in a square form, of such land at two dollars and fifty cents per acre: Provided, That in case more than one person, association or corporation shall claim the same tract of land the person, association, or corporation having the prior claim by reason of possession and continued occupation shall be entitled to purchase the same; but the entry of no person, association, or corporation shall include improvements made by or in possession of another prior to the passage of this act.

Sec. 13. **Payment for surveys.** That is shall be the duty of any person, association, or corporation entitled to purchase land under this act to make an application to the United States marshal, ex officio surveyor-general of Alaska, for an estimate of the cost of making a survey of the lands occupied by such person, association, or corporation, and the cost of the clerical work necessary to be done in the office of the said United States marshal, ex officio surveyor-general; and on the receipt of such estimate from the United States marshal, ex officio surveyor-general, the said person, association, or corporation shall deposit the amount in a United States depository, as is required by section numbered twenty-four hundred and one, Revised Statutes relating to deposits for surveys.

That on the receipt by the United States marshal, ex-officio surveyor-general, of the said certificates of deposit, he shall employ a competent person to make such survey, under such rules and regulations as may be adopted by the Secretary of the Interior, who shall make his return of his field notes and maps to the office of the said United States marshal, ex officio surveyor-general; and the said United States marshal, ex officio surveyor-general, shall cause the said field notes and plats of such survey to be examined, and, if correct, approve the same, and shall transmit certified copies of such maps and plats to the office of the Commissioner of the General Land Office.

That when the said field notes and plats of said survey shall have been approved by the said Commissioner of the General Land Office, he shall notify such person, association, or corporation, who shall then, within six months after such notice, pay to the said United States marshal, ex officio surveyor-general, for such land, and patent shall issue for the same.

17 May, 1884, ch. 53, s. 8.

Sec. 14. **What lands reserved from entry as town sites.** That none of the provisions of the last two preceding sections of this act shall be so construed as to warrant the sale of any lands belonging to the United States which shall contain coal or the precious metals, or any town site, or which shall be occupied by the United States for public purposes, or which shall be reserved for such purposes, or to which the natives of Alaska have prior rights by virtue of actual occupation, or which shall be selected by the United States Commissioner of Fish and Fisheries on the island of Kadiak and Afognak for the purpose of establishing fish-culture stations. And all tracts of land not exceeding six hundred and forty acres in any one tract now occupied as missionary stations in said district of Alaska are hereby excepted from the operation of the last three proceding sections of this act. No portion of the islands of the Pribylov Group or the Seal Islands of Alaska shall be subject to sale under this act; and the United States reserves, and there shall be reserved in all patents issued under the provisions of the last two preceding sections the right of the United States to regulate the taking of salmon and to do all things necessary

to protect and prevent the destruction of salmon in all the waters of the lands granted frequented by salmon.

17 May, 1884, ch. 53, s. 8; R. S., ss. 1959, 1976; 24 March, 1874, ch. 64; 2 March, 1889, ch. 415.

Sec. 15. **Annette Islands reserved for Indians.** That until otherwise provided by law the body of lands known as Annette Islands, situated in Alexander Archipelago in Southeastern Alaska, on the north side of Dixon's entrance, be, and the same is hereby, set apart as a reservation for the use of the Metlakahtla Indians, and those people known as Metlakahtlans who have recently emigrated from British Columbia to Alaska, and such other Alaskan natives as may join them, to be held and used by them in common, under such rules and regulations, and subject to such restrictions, as may be prescribed from time to time by the Secretary of the Interior.

Sec. 16. **Town-site entries not to include mining rights.** That town-site entries may be made by incorporated towns and cities on the mineral lands of the United States, but no title shall be acquired by such towns or cities to any vein of gold, silver, cinnabar, copper, or lead, or to any valid mining claim or possession held under existing law. When mineral veins are possessed within the limits of an incorporated town or city, and such possession is recognized by local authority or by the laws of the United States, the title to town lots shall be subject to such recognized possession and the necessary use thereof and when entry has been made or patent issued for such town sites to such incorporated town or city, the possessor of such mineral vein may enter and receive patent for such mineral vein, and the surface ground appertaining thereto: Provided, That no entry shall be made by such mineral-vein claimant for surface ground where the owner or occupier of the surface ground shall have had possession of the same before the inception of the title of the mineral-vein applicant. * * * * *

Approved, March 3d, 1891.

R. S., ss. 2318, 2380, 2394; R. S., s. 2343.

[27 Stat. L. 472, Chap. 150.]

AN ACT to extend to the North Pacific Ocean the provisions of the statutes for the protection of the fur-seals and other fur-bearing animals.

Fur-seals—protection to extend to North Pacific Ocean. Be it enacted, etc., That whenever the Government of the United States shall conclude an effective international arrangement for the protection of fur seals in the North Pacific Ocean, by agreement with any power, or as a result of the decision of the tribunal of arbitration under the convention concluded between the United States and Great Britain February twenty-ninth, eighteen hundred and ninety-two, and so long as such arrangement shall continue, the provisions of section nineteen hundred and fifty-six of the Revised Statutes, and all other provisions of the statutes of the United States, so far as the same may be applicable, relative to the protection of fur seals and other fur-bearing animals within the limits of Alaska or in the waters thereof, shall be extended to and over all that portion of the Pacific Ocean included in such international arrangement. Whenever an effective international arrangement is concluded as aforesaid, it shall be the duty of the President to declare that fact by proclamation, and to designate the portion of the Pacific Ocean to which it is applicable, and that this act has become operative; and likewise when such arrangement ceases, to declare that fact and that this act has become inoperative, and his proclamation with respect thereto shall be conclusive. During the extension as aforesaid of said laws for the protection of fur seals and other fur-bearing animals all violations thereof in said designated portion of the Pacific Ocean

shall be held to be the same as if committed within the limits of Alaska or in the waters thereof, but they may be prosecuted either in the district court of Alaska or in any district court of the United States in California, Oregon, or Washington.

Approved, February 21, 1893.

Treaty, 29 Feb., 1892; 27 Stat. L. 947; 2 March, 1889, ch. 415, s. 3 (1 Supp. 701).

[27 Stat. L. 675, c. 212; 28 Stat. L. 162, c. 174; 28 Stat. L. 764, c. 177.]

Par. 7. **Commissioner at Kadiak.** Territory of Alaska * * * five commissioners, one of whom shall reside at Kadiak in the District of Alaska, at one thousand dollars each.

[28 Stat. L. 52, Chap. 57.]

AN ACT to give effect to the award rendered by the Tribunal of Arbitration, at Paris, under the treaty between the United States and Great Britain concluded at Washington, February twenty-ninth, eighteen hundred and ninety-two, for the purpose of submitting to arbitration certain questions concerning the preservation of the fur seals.

Award of arbitrators. Whereas the following articles of the award of the Tribunal of Arbitration constituted under the treaty concluded at Washington the twenty-ninth of February, eighteen hundred and ninety-two, between the United States of America and Her Majesty the Queen of the United Kingdom of Great Britain and Ireland were delivered to the agents of the respective governments on the fifteenth day of August, eighteen hundred and ninety-three:

ARTICLE 1.

Seal hunting forbidden, where. The governments of the United States and Great Britain shall forbid their citizens and subjects respectively to kill, capture, or pursue at any time, and in any manner whatever, the animals commonly called fur seals, within a zone of sixty miles around the Pribilov Islands, inclusive of the territorial waters.

The miles mentioned in the preceding paragraph are geographical miles, of sixty to a degree of latitude.

24 April, 1894, ch. 60.

ARTICLE 2.

Closed season on high sea. The two governments shall forbid their citizens and subjects respectively to kill, capture or pursue, in any manner whatever, during the season extending, each year, from the first of May to the thirty-first of July, both inclusive, the fur seals on the high sea, in the part of the Pacific Ocean, inclusive of the Bering Sea, which is situated to the north of the thirty-fifth degree of north latitude, and eastward of the one hundred and eightieth degree of longitude from Greenwich till it strikes the water boundary described in article one of the treaty of eighteen hundred and sixty-seven between the United States and Russia, and following that line up to Berings Straits.

ARTICLE 3.

Only sailing vessels. During the period of time and in the waters in which the fur-seal fishing is allowed, only sailing vessels shall be permitted to carry on or take part in fur-seal fishing operations. They will however be at liberty to avail themselves of the use of such canoes or undecked boats, propelled by paddles, oars, or sails, as are in common use as fishing boats.

ARTICLE 4.

Licenses for vessels. Each sailing vessel authorized to fish for fur seals must be provided with a special license issued for that purpose by its Govern-

ment, and shall be required to carry a distinguishing flag to be prescribed by its Government.

ARTICLE 5.

Captures to be entered in log book—To be communicated. The masters of the vessels engaged in fur-seal fishing shall enter accurately in their official log book the date and place of each fur-seal fishing operation, and also the number and sex of the seals captured upon each day. These entries shall be communicated by each of the two governments to the other at the end of each fishing season.

ARTICLE 6.

Nets and explosives — Shotguns. The use of nets, firearms and explosives shall be forbidden in the fur-seal fishing. This restriction shall not apply to shotguns when such fishing takes place outside of Behring sea, during the season when it may be lawfully carried on.

ARTICLE 7.

Fitness of men. The two governments shall take measures to control the fitness of the men authorized to engage in fur-seal fishing; these men shall have been proved fit to handle with sufficient skill the weapons by means of which this fishing may be carried on.

ARTICLE 8.

Indians excepted. The regulations contained in the preceding articles shall not apply to Indians dwelling on the coast of the territory of the United States or of Great Britain, and carrying on fur-seal fishing in canoes or undecked boats not transported by or used in connection with other vessels and propelled wholly by paddles, oars or sails and manned by not more than five persons each in the way hitherto practiced by the Indians, provided such Indians are not in the employment of other persons and provided that, when so hunting in canoes or undecked boats, they shall not hunt fur seals outside of territorial waters under contract for the delivery of the skins to any person.

This exemption shall not be construed to affect the municipal law of either country, nor shall it extend to the waters of Behring Sea or the waters of the Aleutian Passes.

Nothing herein contained is intended to interfere with the employment of Indians as hunters or otherwise in connection with fur sealing vessels as heretofore.

ARTICLE 9.

How long in force. The concurrent regulations hereby determined with a view to the protection and preservation of the fur seals, shall remain in force until they have been, in whole or in part, abolished or modified by common agreement between the governments of the United States and of Great Britain.

The said concurrent regulations shall be submitted every five years to a new examination, so as to enable both interested governments to consider whether, in the light of past experience, there is occasion for any modification thereof.

Seal-hunting forbidden, where. Now therefore, be it enacted, etc., That no citizen of the United States, or person owing the duty of obedience to the laws or the treaties of the United States, nor any person belonging to or on board of a vessel of the United States, shall kill, capture, or pursue, at any time, or in any manner whatever, outside of territorial waters, any fur seal in the waters surrounding the Pribilov Islands within a zone of sixty geographi-

cal miles (sixty to a degree of latitude) around said islands, exclusive of the territorial waters.

See April 24, 1894.

Sec. 2. **Closed seas on high sea.** That no citizen of the United States, or person above described in section one of this act, nor any person belonging to or on board of a vessel of the United States, shall kill, capture, or pursue, in any manner whatever, during the season extending from the first day of May to the thirty-first day of July, both inclusive, in each year, any fur seal on the high seas outside of the zone mentioned in section one, and in that part of the Pacific Ocean, including Behring Sea, which is situated to the north of the thirty-fifth degree of north latitude and to the east of the one hundred and eightieth degree of longitude from Greenwich till it strikes the water boundary described in article one of the treaty of eighteen hundred and sixty-seven, between the United States and Russia, and following that line up to Behring Straits.

Sec. 3. **Only sailing vessels, etc.** No citizen of the United States or person above described, in the first section of this Act, shall, during the period and in the waters in which by section two of this Act the killing of fur seals is not prohibited, use or employ any vessel, nor shall any vessel of the United States be used or employed, in carrying on or taking part in fur-seal fishing operations, other than a sailing vessel propelled by sails exclusively, and such canoes or undecked boats, propelled by paddles, oars, or sails as may belong to, and be used in connection with, such sailing vessel; nor shall any sailing vessel carry on or take part in such operations without a special license obtained from the Government for that purpose, and without carrying a distinctive flag prescribed by the Government for the same purpose.

Sec. 4. **Master to enter captures and report same.** That every master of a vessel licensed under this act to engage in fur-seal fishing operations shall accurately enter in his official log book the date and place of every such operation, and also the number and sex of the seals captured each day; and on coming into port, and before landing cargo, the master shall verify, on oath, such official log book as containing a full and true statement of the number and character of his fur-seal fishing operations, including the number and sex of seals captured; and for any false statement willfully made by a person so licensed by the United States in this behalf he shall be subject to the penalties of perjury; and any seal skins found in excess of the statement in the official log book shall be forfeited to the United States.

Sec. 5. **Nets and explosives.** That no person or vessel engaging in fur-seal fishing operations under this Act shall use or employ in any such operations, any net, firearm, airgun, or explosive: Provided however, That this prohibition shall not apply to the use of shotguns in such operations outside of Behring Sea during the season when the killing of fur seals is not there prohibited by this Act.

Sec. 6. **Indians, where excepted.** That the foregoing sections of this act shall not apply to Indians dwelling on the coast of the United States, and taking fur seals in canoes or undecked boats propelled wholly by paddles, oars, or sails, and not transported by or used in connection with other vessels, or manned by more than five persons, in the manner heretofore practiced by the said Indians: Provided, however, That the exception made in this section shall not apply to Indians in the employment of other persons, or who shall kill, capture, or pursue fur seals outside of territorial waters under contract to deliver the skins to other persons, nor to the waters of Behring Sea or of the passes between the Aleutian Islands.

Sec. 7. **Regulations.** That the President shall have power to make regulations respecting the special license and the distinctive flag mentioned in this Act and regulations otherwise suitable to secure the due execution of the provisions of this act, and from time to time to add to, modify, amend, or revoke such regulations, as in his judgment may seem expedient.

Sec. 8. **Penalty for violation.** That, except in the case of a master making a false statement under oath in violation of the provisions of the fourth section of this Act, every person guilty of a violation of the provisions of this Act, or of the regulations made thereunder, shall for each offense be fined not less than two hundred dollars, or imprisoned not more than six months, or both; and all vessels, their tackle, apparel, furniture, and cargo, at any time used or employed in violation of this Act, or of the regulations made thereunder, shall be forfeited to the United States.

Sec. 9. **Prosecutions, in what court.** That any violation of this Act, or of the regulations made thereunder, may be prosecuted either in the district court of Alaska or in any district court of the United States in California, Oregon, or Washington.

Sec. 10. **Unlicensed vessels, etc.** That if any unlicensed vessel of the United States shall be found within the waters to which this Act applies, and at a time when the killing of fur seals is by this Act there prohibited, having on board seal skins or bodies of seals, or apparatus or implements suitable for killing or taking seals; or if any licensed vessel shall be found in the waters to which this Act applies, having on board apparatus or implements suitable for taking seals, but forbidden then and there to be used, it shall be presumed that the vessel in the one case and the apparatus or implements in the other was or were used in violation of this Act until it is otherwise sufficiently proved.

Sec. 11. **Use of naval force.** That it shall be the duty of the President to cause a sufficient naval force to cruise in the waters to which this Act is applicable to enforce its provisions, and it shall be the duty of the commanding officer of any vessel belonging to the naval or revenue service of the United States, when so instructed by the President, to seize and arrest all vessels of the United States found by him to be engaged, used, or employed in the waters last aforesaid in violation of any of the prohibitions of this Act, or of any regulations made thereunder, and to take the same, with all persons on board thereof, to the most convenient port in any district of the United States mentioned in this Act, there to be dealt with according to law.

Sec. 12. **Offending vessels or persons may be seized by British officers.** That any vessel or citizen of the United States, or person described in the first section of this Act, offending against the prohibitions of this Act or the regulations thereunder, may be seized and detained by the naval or other duly commissioned officers of Her Majesty the Queen of Great Britain, but when so seized and detained they shall be delivered as soon as practicable, with any witnesses and proofs on board, to any naval or revenue officer or other authorities of the United States, whose courts alone shall have jurisdiction to try the offense and impose the penalties for the same. Provided, however, That British officers shall arrest and detain vessels and persons as in this section specified only after, by appropriate legislation, Great Britain shall have authorized officers of the United States duly commissioned and instructed by the President to that end to arrest, detain, and deliver to the authorities of Great Britain vessels and subjects of that Government offending against any

statutes or regulations of Great Britain enacted or made to enforce the award of the treaty mentioned in the title of this Act.

Approved, April 6, 1894.

[28 Stat. L. 64, Chap. 63.]

Award of arbitrators between United States and Great Britain. An act to amend section one of an act approved April sixth, eighteen hundred and ninety-four, entitled "An Act to give effect to the award rendered by the Tribunal of Arbitration, at Paris, under the treaty between the United States and Great Britain, concluded at Washington, February twenty-ninth, eighteen hundred and ninety-two, for the purpose of submitting to arbitration certain questions concerning the preservation of the fur seals."

Be it enacted, etc., That section one of the Act entitled:

"An Act to give effect to the award rendered by the Tribunal of Arbitration, at Paris, under the treaty between the United States and Great Britain, concluded at Washington, February twenty-ninth, eighteen hundred and ninety-two, for the purpose of submitting to arbitration certain questions concerning the preservation of the fur seals," approved April sixth, eighteen hundred and ninety-four, be amended by striking out the word "exclusive" where it occurs in said section one and inserting the word "inclusive," so that said section will read:

Seal hunting forbidden within certain limits. That no citizen of the United States, or person owing the duty of obedience to the laws or the treaties of the United States, nor any person belonging to or on board of a vessel of the United States, shall kill, capture, or pursue, at any time, or in any manner whatever, outside of territorial waters, any fur seal in the waters surrounding the Pribilov Islands within a zone of sixty geographical miles (sixty to a degree of latitude) around said islands, inclusive of the territorial waters.

Approved, April 24, 1894.

6 April, 1894, ch. 57, s. 1.

[28 Stat. L. 372, Chap. 301.]

Price for fox skins. * * Saint Paul Island. * * ; and the Secretary of the Treasury is hereby required to fix a reasonable price to be paid the natives of said islands for blue fox skins secured by them. * *

Approved, August 18, 1894.

[29 Stat. L. 60, Chap. 58.]

AN ACT to reorganize the customs collection district of Alaska.

Customs district. Be it enacted, etc., That the customs collection district of Alaska be, and the same is hereby, reorganized and established to comprise the Territory of Alaska, in which Sitka shall be the port of entry.

Sec. 2. **Subports of entry and delivery.** That such other places as may be designated by the Secretary of the Treasury, as the interests of commerce may require, shall be subports of entry or delivery or both; and customs officers shall be stationed at such subports, with authority to enter and clear vessels, receive duties, fees, and other moneys, and perform such other services and receive such compensation as in the judgment of the Secretary of the Treasury the exigencies of commerce may require.

Sec. 3. **Repeal.** That all acts or parts of acts in conflict with the provisions of this Act are hereby repealed.

Approved, March 16, 1896.

R. S., ss. 2591, 2592, ante p. 437.

[29 Stat. L. 140, Chap. 252.]

Excepted from salary act. * * * Provided that none of the provisions of sections six to twenty-three, both inclusive, of this Act, shall apply to the * * * Territory of Alaska. * * *

Approved, May 28, 1896.

(The sections referred to provide salaries, in lieu of fees, for United States attorneys and United States marshals.)

[29 Stat. L. 316, Chap. 387.]

AN ACT to amend an act entitled "An Act to provide for the protection of the salmon fisheries of Alaska," approved June 9, 1896.

[The provisions of this Act are re-enacted as ss. 179-183 of the Penal Code, ante, p. 39.]

[29 Stat. L. 267, Chap. 373.]

Clerk hire in executive departments. * * * And the provisions of section nineteen hundred and thirty-five of the Revised Statutes of the United States* in relation to clerk hire in the executive departments of the Territories is hereby extended to include the Territories of Alaska.

Approved, June 8, 1896.

R. S., s. 1935.

*Sec. 1935. There shall be appropriated, annually, one thousand dollars, to be expended by the respective governors, to defray the contingent expenses of New Mexico, Utah, Colorado, Dakota, Arizona, Idaho, Montana and Wyoming, including the salary of the clerk in the executive departments of those territories.

[30 Stat. L. 56, Chap. 2.]

Additional commissioners and deputy marshals. * * * The President shall appoint not more than four additional commissioners in and for the District of Alaska, who shall reside at points designated by him for the purpose, respectively, and who shall have the same powers, duties, fees, and salaries as the present commissioners for that district. The marshal for the District of Alaska shall appoint one additional deputy marshal to reside at each point where an additional commissioner shall be located by the President as aforesaid, said deputies to have the same powers, duties, fees, and salary as the present deputy marshals for that district. * * *

Approved, April 24, 1897.

[30 Stat. L. 215, Chap. 14.]

AN ACT to amend section eight of the Act entitled "An Act providing a civil government for Alaska," approved May seventeenth, eighteen hundred and eighty-four, to create the office of surveyor-general for Alaska, and for other purposes.

Sec. 8, Vol. 23, p. 26, amended. Be it enacted, etc., That section eight of the Act entitled "An Act providing a civil government for Alaska," be, and the same is hereby, amended by striking out the words "the Commissioner provided for by this Act to reside in Sitka shall be ex officio register of said land office, and the clerk provided for by this Act shall be ex officio receiver of public moneys, and the marshal provided for by this Act shall be ex officio survey-general of said district."

Sec. 2. Appointment of surveyor-general. That there shall be appointed by the President, by and with the advice and consent of the Senate, a surveyor-general for the District of Alaska, embracing one surveying district.

Sec. 3. **Salary.** That the surveyor-general of Alaska shall receive a salary at the rate of two thousand dollars per annum.

Sec. 4. **Division of Territory into two land districts.** The President is authorized and empowered, in his discretion, to divide said Territory into two land districts and to designate the boundaries thereof, and he is also authorized and empowered to appoint, by and with the advice and consent of the Senate, a register of said additional land office and receiver of public moneys therefor, and in case of the creation of such additional land district the surveyor-general shall serve in both districts.

Approved, July 24 1897.

[30 Stat. L. 226, Chap. 3.]

AN ACT prohibiting the killing of fur seals in the waters of the North Pacific Ocean.

Fur seals, killing, etc., in waters of North Pacific Ocean forbidden. Be it enacted, etc., That no citizen of the United States, nor person owing duty of obedience to the laws or the treaties of the United States, nor any person belonging to or on board of a vessel of the United States, shall kill, capture, or hunt, at any time or in any manner whatever any fur seal in the waters of the Pacific Ocean north of the thirty-fifth degree of north latitude and including Bering Sea and the sea of Okhotsk.

Sec. 2. **Equipments, etc., of vessels.** That no citizen of the United States, nor person above described in section one, shall equip, use, or employ, or furnish aid in equipping, using, or employing, or furnish supplies to any vessel used or employed, or to be used or employed in carrying on or taking part in said killing, capturing, or hunting of fur seals in said waters, nor shall any vessel of the United States be so used or employed.

Sec. 3. **Penalty.** That every person guilty of a violation of the provisions of this Act, or of any regulations made thereunder, shall, for each offense, be fined not less than two hundred dollars or more than two thousand dollars, or imprisoned not more than six months, or both; and every vessel, its tackle, apparel, furniture, and cargo, at any time used or employed in violation of this Act, or of the regulations made thereunder, shall be forfeited to the United States.

Sec. 4. **Presumption of violation of act.** That if any vessel of the United States shall be found within the waters to which this Act applies, having on board fur-seal skins or bodies of seals, or apparatus or implements suitable for killing or taking seals, it shall be presumed that such vessel was used or employed in the killing of said seals, or that said apparatus or implements were used in violation of this Act until the contrary is proved to the satisfaction of the court.

Sec. 5. **Jurisdiction of courts.** That any violation of this Act or of the regulations thereunder may be prosecuted either in the district court of Alaska or in any district court of the United States in California, Oregon, or Washington.

Sec. 6. **Right of Indians to fish not affected.** That this Act shall not interfere with the privileges accorded to Indians dwelling on the coast of the United States under section six of the Act of April sixth, eighteen hundred

and ninety-four, but the limitations prescribed in said Act shall remain in full force.

Stat. L., 28, p. 54.

Sec. 7. **Pribilof Islands.** That this Act shall not affect in any way the killing or taking of fur seals upon the Pribilof Islands, or the laws of the United States relating thereto.

R. S., sec. 1959, p. 344, etc.

Sec. 8. **Searching of suspected vessels.** That any officer of the Naval or Revenue-Cutter Service of the United States, and any other officers duly designated by the President, may search any vessel of the United States in port or on the high seas suspected of having violated or of having an intention to violate the provisions of this Act, and may seize such vessel and the offending officers and crew and bring them into the most accessible port of the States and Territory mentioned in section five of this Act for trial.

Sec. 9. **Prohibition of importation of fur-seal skins, etc.** That the importation into the United States by any person whatsoever of fur-seal skins taken in the waters mentioned in this Act, whether raw, dressed, dyed, or manufactured, is hereby prohibited, and all such articles imported after this Act shall take effect shall not be permitted to be exported, but shall be seized and destroyed by the proper officers of the United States.

Sec. 10. **Regulations by the President.** That the President shall have power to make all necessary regulations to carry this Act into effect.

Approved, December 29, 1897.

[30 Stat. L. 248, Chap. 26.]

AN ACT to amend the laws relating to navigation.

Sec. 4. **Report by masters of foreign vessels.** That section thirty-one hundred and nine of the Revised Statutes is hereby amended to read:

"Sec. 3109. The master of any foreign vessel, laden or in ballast, arriving, whether by sea or otherwise, in the waters of the United States from any foreign territory adjacent to the northern, northeastern, or northwestern frontiers of the United States, shall report at the office of any collector or deputy collector of the customs, which shall be nearest to the point at which such vessel may enter such waters; and such vessel shall not transfer her cargo or passengers to another vessel or proceed farther inland, either to unlade or take in cargo, without a special permit from such collector or deputy collector, issued under and in accordance with such general or special regulations as the Secretary of the Treasury may, in his discretion, from time to time prescribe. This section shall also apply to trade with or through Alaska. For any violation of this section such vessel shall be seized and forfeited."

[30 Stat. L. 409, Chap. 299.]

AN ACT extending the homestead laws and providing for right of way for railroads in the District of Alaska, and for other purposes.

Homestead laws extended to Alaska. Be it enacted, etc., That the homestead land laws of the United States and the rights incident thereto, including the right to enter surveyed or unsurveyed lands under provisions of law relating to the acquisition of title through soldiers' additional homestead rights, are hereby extended to the District of Alaska, subject to such regulations as may be made by the Secretary of the Interior; and no indemnity, deficiency, or lieu lands pertaining to any land grant whatsoever originating outside of said District of Alaska shall be located within or taken from lands in said

District: Provided, That no entry shall be allowed extending more than eighty rods along the shore of any navigable water, and along such shore a space of at least eighty rods shall be reserved from entry between all such claims, and that nothing herein contained shall be so construed as to authorize entries to be made, or title to be acquired, to the shore of any navigable waters within said District: And it is further provided, That no homestead shall exceed eighty acres in extent.

Sec. 2. **Right of way to railroads.** That the right of way through the lands of the United States in the District of Alaska is hereby granted to any railroad company, duly organized under the laws of any State or Territory or by the Congress of the United States, which may hereafter file for record with the Secretary of the Interior a copy of its articles of incorporation, and due proofs of its organization under the same, to the extent of one hundred feet on each side of the center line of said road; also the right to take from the lands of the United States adjacent to the line of said road, material, earth, stone, and timber necessary for the construction of said railroad; also the right to take for railroad uses, subject to the reservation of all minerals and coal therein, public lands adjacent to said right of way for station buildings, depots, machine shops, side tracks, turn-outs, water stations, and terminals, and other legitimate railroad purposes, not to exceed in amount twenty acres for each station, to the extent of one station for each ten miles of its road, excepting at terminals and junction points, which may include additional forty acres, to be limited on navigable waters to eighty rods on the shore line, and with the right to use such additional ground as may in the opinion of the Secretary of the Interior be necessary where there are heavy cuts or fills: Provided, That nothing herein contained shall be so construed as to give to such railroad company, its lessees, grantees, or assigns the ownership or use of minerals, including coal, within the limits of its right of way, or of the lands hereby granted: Provided further, That all mining operations prosecuted or undertaken within the limits of such right of way or of the lands hereby granted shall, under rules and regulations to be prescribed by the Secretary of the Interior, be so conducted as not to injure or interfere with the property or operations of the road over its said lands or right of way. And when such railway shall connect with any navigable stream or tide water such company shall have power to construct and maintain necessary piers and wharves for connection with water transportation, subject to the supervision of the Secretary of the Treasury: Provided, That nothing in this Act contained shall be construed as impairing in any degree the title of any State that may hereafter be erected out of said District, or any part thereof, to tide lands and beds of any of its navigable waters, or the right of such State to regulate the use thereof, nor the right of the United States to resume possession of such lands, it being declared that all such rights shall continue to be held by the United States in trust for the people of any State or States which may hereafter be erected out of said District. The term "navigable waters," as herein used, shall be held to include all tidal waters up to the line of ordinary high tide and all nontidal waters navigable in fact up to the line of ordinary high-water mark. That all charges for the transportation of freight and passengers on railroads in the District of Alaska shall be printed and posted as required by section six of an Act to regulate commerce as amended on March second, eighteen hundred and eighty-nine, and such rates shall be subject to revision and modification by the Secretary of the Interior.

Sec. 3. **Passage of railroads through canyons.** That any railroad company whose right of way, or whose track or roadbed upon such right of way, passes through any canyon, pass, or defile shall not prevent any other railroad com-

pany from the use and occupancy of said canyon, pass, or defile for the purposes of its road, in common with the road first located, or the crossing of other railroads at grade; and the location of such right of way through any canyon, pass, or defile shall not cause the disuse of any tramway, wagon road, or other public highway now located therein, nor prevent the location through the same of any such tramway, wagon road, or highway where such tramway, wagon road, or highway may be necessary for the public accommodation; and where any change in the location of such tramway, wagon road, or highway is necessary to permit the passage of such railroad through any canyon, pass, or defile, said railroad company shall, before entering upon the ground occupied by such tramway, wagon road, or highway, cause the same to be reconstructed at its own expense in the most favorable location, and in as perfect a manner as the original road or tramway: Provided, That such expenses shall be equitably divided between any number of railroad companies occupying and using the same canyon, pass, or defile, and that where the space is limited the United States district court shall require the road first constructed to allow any other railroad or tramway to pass over its track or tracks through such canyon, pass, or defile on such equitable basis as the said court may prescribe; and all shippers shall be entitled to equal accommodations as to the movement of their freight and without discrimination in favor of any person or corporation: Provided, That nothing herein shall be construed as depriving Congress of the right to regulate the charges for freight, passengers and wharfage.

Sec. 4. **Appraisal of land taken.** That where any company, the right of way to which is hereby granted, shall in the course of construction find it necessary to pass over private lands or possessory claims on lands of the United States, condemnation of a right of way across the same may be made in accordance with section three of the Act entitled "An Act to amend an Act entitled 'An Act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes, approved July first, eighteen hundred and sixty-two,'" approved July second, eighteen hundred and sixty-four: Provided further, That any such company, by filing with the Secretary of the Interior a preliminary actual survey and plat of its proposed route, shall have the right at any time within one year thereafter, to file the map and profile of definite location provided for in this Act, and such preliminary survey and plat shall, during the said period of one year from the time of filing the same, have the effect to render all the lands on which said preliminary survey and plat shall pass subject to such right of way.

13 Stat. L., 356; 12 Ibid., 489.

Sec. 5. **Maps of definite location.** That any company desiring to secure the benefits of this Act shall, within twelve months after filing the preliminary map of location of its road as hereinbefore prescribed, whether upon surveyed or unsurveyed lands, file with the register of the land office for the district where such land is located a map and profile of at least a twenty-mile section of its road or a profile of its entire road if less than twenty miles, as definitely fixed, and shall thereafter each year definitely locate and file a map of such location as aforesaid of not less than twenty miles additional of its line of road until the entire road has been thus definitely located, and upon approval thereof by the Secretary of the Interior the same shall be noted upon the records of said office, and thereafter all such lands over which such right of way shall pass shall be disposed of subject to such right of way: Provided, That if any section of said road shall not be completed within one year after the definite location of said section so approved, or if the map of definite location be not

filed within one year as herein required, or if the entire road shall not be completed within four years from the filing of the map of definite location, the rights herein granted shall be forfeited as to any such uncompleted section of said road, and thereupon shall revert to the United States without further action or declaration, the notation of such uncompleted section upon the records of the land office shall be canceled, and the reservations of such lands for the purposes of said right of way, stations, and terminals shall cease and become null and void without further action.

Sec. 6. **Wagon roads and tramways.** That the Secretary of the Interior is hereby authorized to issue a permit, by instrument in writing, in conformity with and subject to the restrictions herein contained, unto any responsible person, company, or corporation, for a right of way over the public domain in said District, not to exceed one hundred feet in width, and ground for station and other necessary purposes, not to exceed five acres for each station for each five miles of road, to construct wagon roads and wire rope, aerial, or other tramways, and the privilege of taking all necessary material from the public domain in said District for the construction of such wagon roads or tramways, together with the right, subject to supervision and at rates to be approved by said Secretary, to levy and collect toll or freight and passenger charges on passengers, animals, freight, or vehicles passing over the same for a period not exceeding twenty years, and said Secretary is also authorized to sell to the owner or owners of any such wagon road or tramway, upon the completion thereof, not to exceed twenty acres of public land at each terminus at one dollar and twenty-five cents per acre, such lands when located at or near tide water not to extend more than forty rods in width along the shore line and the title thereto to be upon such expressed conditions as in his judgment may be necessary to protect the public interest, and all minerals, including coal, in such right of way or station grounds shall be reserved to the United States: Provided, That such lands may be located concurrently with the line of such road or tramway, and the plat of preliminary survey and the map of definite location shall be filed as in the case of railroads and subject to the same conditions and limitations: Provided further, That such rights of way and privileges shall only be enjoyed by or granted to citizens of the United States or companies or corporations organized under the laws of a State of Territory; and such rights and privileges shall be held subject to the right of Congress to alter, amend, repeal, or grant equal rights to others on contiguous or parallel routes. And no right to construct a wagon road on which toll may be collected shall be granted unless it shall first be made to appear to the satisfaction of the Secretary of the Interior that the public conveyance requires the construction of such proposed road, and that the expense of making the same available and convenient for public travel will not be less on an average than five hundred dollars per mile: Provided, That if the proposed line of road in any case shall be located over any road or trail in common use for public travel, the Secretary of the Interior shall decline to grant such right of way, if, in his opinion, the interests of the public would be injuriously affected thereby. Nor shall any right to collect toll upon any wagon road in said District be granted or inure to any person, corporation, or company until it shall be made to appear to the satisfaction of said Secretary that at least an average of five hundred dollars per mile has been actually expended in constructing such road; and all persons are prohibited from collecting or attempting to collect toll over any wagon road in said District, unless such person or the company or person for whom he acts shall at the time and place the collection is made or attempted to be made possess written authority, signed by the Secretary of the Interior, authorizing the collection and specifying the rates of toll: Provided,

That accurate printed copies of said written authority from the Secretary of the Interior, including toll, freight, and passenger charges thereby approved, shall be kept constantly and conspicuously posted at each station where toll is demanded or collected. And any person, corporation, or company collecting or attempting to collect toll without such written authority from the Secretary of the Interior, or failing to keep the same posted as herein required, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined for each offense not less than fifty dollars nor more than five hundred dollars, and in default of payment of such fine and costs of prosecution shall be imprisoned in jail not exceeding ninety days, or until such fine and costs of prosecution shall have been paid.

That any person, corporation, or company qualified to construct a wagon road or tramway under the provisions of this Act that may heretofore have constructed not less than one mile of road, at a cost of not less than five hundred dollars per mile, or one-half mile of tramway at a cost of not less than five hundred dollars; shall have the prior right to apply for such right of way and for lands at stations and terminals and to obtain the same pursuant to the provisions of this Act over and along the line hitherto constructed or actually being improved by the applicant, including wharves connected therewith. That if any party to whom license has been granted to construct such wagon road or tramway shall, for the period of one year, fail, neglect, or refuse to complete the same, the rights herein granted shall be forfeited as to any such uncompleted section of said wagon road or tramway, and thereupon shall revert to the United States without further action or declaration, the notation of such uncompleted section upon the records of the land office shall be canceled, and the reservations of such lands for the purposes of said right of way shall cease and become null and void without further action. And if such road or tramway shall not be kept in good condition for use, the Secretary of the Interior may prohibit the collection of toll thereon pending the making of necessary repairs.

That all mortgages executed by any company acquiring a right of way under this Act, upon any portion of its road that may be constructed in said District of Alaska, shall be recorded with the Secretary of the Interior, and the record thereof shall be notice of their execution, and shall be a lien upon all the rights and property of said company as therein expressed, and such mortgage shall also be recorded in the office of the secretary of the District of Alaska and in the office of the secretary of the State or Territory wherein such company is organized: Provided, That all lawful claims of laborers, contractors, subcontractors, or material men, for labor performed or material furnished in the construction of the railroad, tramway, or wagon road shall be a first lien thereon and take precedence of any mortgage or other lien.

Sec. 7. **Reservations.** That this act shall not apply to any lands within the limits of any military, park, Indian, or other reservation unless such right of way shall be provided for by Act of Congress.

Sec. 8. **Amendment. Transfers.** That Congress hereby reserves the right at any time to alter, amend, or repeal this Act or any part thereof; and the right of way herein and hereby authorized shall not be assigned or transferred in any form whatever prior to the construction and completion of at least one-fourth of the proposed mileage of such railroad, wagon road, or tramway, as indicated by the map of definite location, except by mortgages or other liens that may be given or secured thereon to aid in the construction thereof: Provided, That where within ninety days after the approval of this Act, proof is made to the satisfaction of the Secretary of the Interior that actual surveys, evidenced by designated monuments, were made, and the line of a railroad,

wagon road or tramway located thereby, or that actual construction was commenced on the line of any railroad, wagon road or tramway, prior to January twenty-first, eighteen hundred and ninety-eight, the rights to inure hereunder shall, if the terms of this Act are complied with as to such railroad, wagon road or tramway, relate back to the date when such survey or construction was commenced; and in all conflicts relative to the right of way or other privilege of this Act the person, company or corporation having been first in time in actual survey or construction, as the case may be, shall be deemed first in right.

Sec. 9. **Indication of location on profile map.** That the map and profile of definite location of such railroad, wagon road, or tramway, to be filed as hereinbefore provided, shall, when the line passes over surveyed lands, indicate the location of the road by reference to section or other established survey corners, and where such line passes over unsurveyed lands the location thereon shall be indicated by courses and distances and by references to natural objects and permanent monuments in such manner that the location of the road may be readily determined by reference to descriptions given in connection with said profile map.

Sec. 10. **Lands for purposes of trade, etc.** That any citizen of the United States twenty-one years of age, or any association of such citizens, or any corporation incorporated under the laws of the United States or of any State or Territory now authorized by law to hold lands in the Territories, hereafter in the possession of and occupying public lands in the District of Alaska in good faith for the purposes of trade, manufacture, or other productive industry, may each purchase one claim only not exceeding eighty acres of such land for any one person, association, or corporation, at two dollars and fifty cents per acre, upon submission of proof that said area embraces improvements of the claimant and is needed in the prosecution of such trade, manufacture, or other productive industry, such tract of land not to include mineral or coal lands, and ingress and egress shall be reserved to the public on the waters of all streams, whether navigable or otherwise: Provided, That no entry shall be allowed under this Act on lands abutting on navigable water of more than eighty rods: Provided further, That there shall be reserved by the United States a space of eighty rods in width between tracts sold or entered under the provisions of this Act on lands abutting on any navigable stream, inlet, gulf, bay, or seashore, and that the Secretary of the Interior may grant the use of such reserved lands abutting on the water front to any citizen or association of citizens, or to any corporation incorporated under the laws of the United States or under the laws of any State or Territory, for landings, and wharves, with the provision that the public shall have access to and proper use of such wharves, and landings, at reasonable rates of toll to be prescribed by said Secretary, and a roadway sixty feet in width, parallel to the shore line as near as may be practicable, shall be reserved for the use of the public as a highway: Provided further, That in case more than one person, association, or corporation shall claim the same tract of land, the person, association, or corporation having the prior claim, by reason of actual possession and continued occupation in good faith, shall be entitled to purchase the same, but where several persons are or may be so possessed of parts of the tract applied for the same shall be awarded to them according to their respective interests: Provided further, That all claims substantially square in form and lawfully initiated, prior to January twenty-first eighteen hundred and ninety-eight, by survey or otherwise, under sections twelve and thirteen of the Act approved March third, eighteen hundred and ninety-one (Twenty-sixth Statutes at Large, Chapter five hundred and sixty-one), may be perfected and patented upon com-

pliance with the provisions of said Act, but subject to the requirements and provisions of this Act, except as to area, but in no case shall such entry extend along the water front for more than one hundred and sixty rods: And provided further, That the Secretary of the Interior shall reserve for the use of the natives of Alaska suitable tracts of land along the water front of any stream, inlet, bay, or sea shore for landing places for canoes and other craft used by such natives: Provided, That the Annette, Pribilof Islands, and the islands leased or occupied for the propagation of foxes be excepted from the operation of this Act.

That all affidavits, testimony, proofs, and other papers provided for by this Act and by said Act of March third, eighteen hundred and ninety-one, or by any departmental or Executive regulation thereunder, by depositions or otherwise, under commission from the register and receiver of the land office, which may have been or may hereafter be taken and sworn to anywhere in the United States, before any court, judge, or other officer authorized by law to administer an oath, shall be admitted in evidence as if taken before the register and receiver of the proper local land office. And thereafter such proof, together with a certified copy of the field notes and plat of the survey of the claim, shall be filed in the office of the surveyor-general of the District of Alaska, and if such survey and plat shall be approved by him, certified copies thereof, together with the claimant's application to purchase, shall be filed in the United States land office in the land district in which the claim is situated, whereupon, at the expense of the claimant, the register of such land office shall cause notice of such application to be published for at least sixty days in a newspaper of general circulation published nearest the claim within the District of Alaska, and the applicant shall at the time of filing such field notes, plat, and application to purchase in the land office, as aforesaid, cause a copy of such plat, together with the application to purchase, to be posted upon the claim, and such plat and application shall be kept posted in a conspicuous place on such claim continuously for at least sixty days, and during such period of posting and publication or within thirty days thereafter any person, corporation, or association, having or asserting any adverse interest in, or claim to, the tract of land or any part thereof sought to be purchased, may file in the land office where such application is pending, under oath, an adverse claim setting forth the nature and extent thereof, and such adverse claimant shall, within sixty days after the filing of such adverse claim, begin action to quiet title in a court of competent jurisdiction within the District of Alaska, and thereafter no patent shall issue for such claim until the final adjudication of the rights of the parties, and such patent shall then be issued in conformity with the final decree of the court.

Sec. 11. Timber, sale of. That the Secretary of the Interior, under such rules and regulations as he may prescribe, may cause to be appraised the timber or any part thereof upon public lands in the District of Alaska, and may from time to time sell so much thereof as he may deem proper for not less than the appraised value thereof, in such quantities to each purchaser as he shall prescribe, to be used in the District of Alaska, but not for export therefrom. And such sales shall at all times be limited to actual necessities for consumption in the District from year to year, and payments for such timber shall be made to the receiver of public moneys of the local land office of the land district in which said timber may be sold, under such rules and regulations as the Secretary of the Interior may prescribe, and the moneys arising therefrom shall be accounted for by the receiver of such land office to the Commissioner of the General Land Office in a separate account, and shall be covered into the Treasury. The Secretary of the Interior may permit, under regulations to be

prescribed by him, the use of timber found upon the public lands in said District of Alaska by actual settlers, residents, individual miners, and prospectors for minerals, for firewood, fencing, buildings, mining, prospecting, and for domestic purposes, as may actually be needed by such persons for such purposes.

Sec. 12. **Land districts.** That the President is authorized and empowered, in his discretion, by Executive order from time to time to establish or discontinue land districts in the District of Alaska, and to define, modify, or change the boundaries thereof, and designate or change the location of any land office therein; and he is also authorized and empowered to appoint, by and with the advice and consent of the Senate, a register for each land district he may establish and a receiver of public moneys therefor; and the register and receiver appointed for such district shall, during their respective terms of office, reside at the place designated for the land office. That the registers and receivers of public moneys in the land districts of Alaska shall each receive an annual salary of one thousand five hundred dollars and the fees provided by law for like officers in the State of Oregon, not to exceed, including such salary and fees, a total annual compensation of three thousand dollars for each of said officers.

Sec. 13. **Citizens of Canada, mining rights of.** That native-born citizens of the Dominion of Canada shall be accorded in said District of Alaska the same mining rights and privileges accorded to citizens of the United States in British Columbia and the Northwest Territory by the laws of the Dominion of Canada or the local laws, rules, and regulations; but no greater rights shall be thus accorded than citizens of the United States or persons who have declared their intention to become such may enjoy in said District of Alaska; and the Secretary of the Interior shall from time to time promulgate and enforce rules and regulations to carry this provision into effect.

Sec. 14. **Bonding privilege to Canada.** That under rules and regulations to be prescribed by the Secretary of the Treasury, the privilege of entering goods, wares and merchandise in bond or of placing them in bonded warehouses at any of the ports in the District of Alaska, and of withdrawing the same for exportation to any place in British Columbia or the Northwest Territory without payment of duty, is hereby granted to the Government of the Dominion of Canada and its citizens or citizens of the United States and to persons who have declared their intention to become such whenever and so long as it shall appear to the satisfaction of the President of the United States, who shall ascertain and declare the fact by proclamation, that corresponding privileges have been and are being granted by the Government of the Dominion of Canada in respect of goods, wares and merchandise passing through the territory of the Dominion of Canada to any point in the District of Alaska from any point in said District.

Approved, May 14, 1898.

[30 Stat. L. 360, Chap. 184.]

AN ACT to create a board of local inspectors of steam vessels for the customs district of Alaska.

Board of inspectors of steam vessels. Be it enacted, etc., That section forty-four hundred and fourteen of the Revised Statutes of the United States, as amended by the act of Congress approved March first, eighteen hundred and ninety-five, chapter one hundred and forty-six, Third Session Fifty-third Congress (page 699, vol. 28, United States Statutes at Large), be amended by in-

serting the word "Alaska" in the last line of the third paragraph of said act, after the word "Alabama" and preceding the word "and."

Approved April 21, 1898.

R. S., s. 4414; 28 Stat. L. 699.

[30 Stat. L. 618, Chap. 546.]

Register and receiver at Sitka. * * * Provided, That the salary of the register and receiver at Sitka, Alaska, shall not be less than one thousand five hundred (dollars) and with fees and commissions not more than three thousand dollars a year each until June 30, 1899, from and after the passage of this Act.

Additional registers and receivers. * * * For salaries and commissions of registers and receivers of two additional land districts in the District of Alaska, twelve thousand dollars: Provided, That the salary of each of said registers and receivers shall not be less than one thousand five hundred (dollars) and with fees and commissions not more than three thousand dollars a year until June 30, 1899, from and after the passage of this act.

Approved July 1, 1898.

[30 Stat. L. 728, Chap. 643.]

AN ACT providing for the transfer from the circuit court of appeals for the ninth circuit to the Supreme Court of certain appeals from the district court for Alaska.

Supreme Court. Transfer to of certain appeals. Be it enacted, etc., That all cases, civil and criminal, filed on appeal from the district court of the United States for the District of Alaska in the United States circuit court of appeals for the ninth judicial circuit, and pending on appeal therein on and prior to the thirtieth day of December, eighteen hundred and ninety-seven, of which the Supreme Court of the United States would have had jurisdiction under the then existing law, if a proper appeal had been taken thereto at the time said cases were filed on appeal in said circuit court of appeals, be, and the same are deemed and treated as regularly filed on appeal in the Supreme Court of the United States as of the date when filed in said circuit court of appeals. The clerk of said circuit court of appeals is directed to transmit to the Supreme Court of the United States, as soon as practicable, the records of such cases, and the clerk of said Supreme Court is directed to receive and file the same for hearing and determination in the Supreme Court of the United States when regularly reached on the docket, subject to any rules made or to be made by said court which may be applicable.

Approved July 8, 1898.

[31 Stat. L. ——.]

AN ACT authorizing the Cape Nome Transportation, Bridge, and Development Company, a corporation organized and existing under the laws of the State of Washington and authorized to do business in the Territory of Alaska, to construct a traffic bridge across the Snake River, at Nome City, in the Territory of Alaska.

Bridge across Snake River. Be it enacted, etc., That the Cape Nome Transportation, Bridge, and Development Company, a corporation organized and existing under the laws of the State of Washington and authorized to do business in the Territory of Alaska, is hereby authorized and empowered to construct, operate, and maintain a general traffic bridge across the Snake River, to be located at such point within or near the corporate limits of the city of Nome, in said Territory of Alaska, as shall be approved by the Secretary of War: Provided, That said bridge shall be constructed as a drawbridge, and the draw shall be opened promptly, upon reasonable signal, for the passage of boats; and, whatever kind of bridge is constructed, the owners thereof shall maintain thereon, at their own expense, from sunset to sunrise, such lights

or other signals as the Light-House Board shall prescribe; that such bridge shall be constructed so as to provide for the passage of vehicles and pedestrians, upon the payment of a reasonable compensation for such use.

Sec. 2. To be a post route. That any bridge built under the provisions of this Act shall be a lawful structure, and shall be recognized and known as a post route, upon which no higher charge shall be made for the transmission over the same of the mails, troops, and munitions of war of the United States passing over said bridge than the rate per mile paid for the transportation over the public highways leading to said bridge; and equal privileges in the use of said bridge shall be granted to all telegraph and telephone companies, and the United States shall have the right of way across said bridge and approaches for postal-telegraph purposes; and said bridge shall be so constructed and operated as not to interfere with the navigation of said river.

Sec. 3. Tolls. That the said corporation shall have the right to charge and collect a reasonable rate of toll, to be approved by the Secretary of War, not exceeding ten cents for pedestrians, twenty-five cents for animals, and fifty cents for vehicles.

Sec. 4. How located and built. That the bridge authorized to be constructed under this Act shall be located and built under and subject to regulations for the security of the navigation of said river as the Secretary of War shall prescribe; and to secure that object the said corporation shall submit to the Secretary of War, for his examination and approval, a design and drawings of the proposed bridge and a map of the location, giving, for the space of one-half mile above and one-half mile below the proposed location, the topography of the banks of the river, the shore lines at high and low water, the direction and strength of the currents, and the soundings, accurately showing the bed of the stream, and shall furnish such other information as may be required for a full and satisfactory understanding of the subject; and until the said plan and location of the bridge are approved by the Secretary of War no work upon the bridge shall be commenced; and should any change be made in the plan of said bridge during the progress of construction such change shall be subject to the approval of the Secretary of War; and any changes in said bridge which the Secretary of War may at any time deem necessary and order in the interests of navigation shall be made by the owners thereof at their own expense.

Sec. 5. When to be completed. That this Act shall be null and void if actual construction of the bridge herein authorized be not commenced within one year and completed within three years from the date of approval hereof.

Sec. 6. Reservations. That Congress hereby expressly reserves the right to alter, amend, or repeal this Act.

Approved, May 4, 1900.

[31 Stat. L. ——.]

AN ACT to authorize the purchase of certain lands in the district of Alaska.

Area and reservations. Be it enacted, etc., That the Karluk Packing Company, claiming under amended survey numbered twenty-four, in the district of Alaska, or its successor in interest, may purchase the land embraced in said survey: Provided, That there shall be reserved to the United States for the use of the public as a highway a strip of land sixty feet in width, parallel with and as near as may be practicable to the shore line of Shellikoff Straits; and for the purpose of allowing access by the public to the waters of Shellikoff Straits, a strip of land fifty feet in width across said survey shall also be reserved, to be located, as near as practicable, between corners seventeen and

thirty of said survey, extending from Shellikoff Straits to the Karluk River, and not to interfere with any existing improvements; and upon payment of the price of two dollars and fifty cents per acre for said land, and submission of proof that said land embraces improvements of the claimant and is needed in the prosecution of its business, patent shall issue as in other cases under section ten of the Act of Congress approved May fourteenth, eighteen hundred and ninety-eight, entitled "An Act extending the homestead laws and providing for right of way for railroads in the district of Alaska, and for other purposes;" but the limitation in said Act, that no entry shall extend along the water front for more than one hundred and sixty rods, shall not be held to apply to such entry of the Karluk Packing Company.

Approved, May 21, 1900.

[31 Stat. L. ——.]

AN ACT making appropriation for the support of the regular and volunteer army for the fiscal year ending June thirtieth, nineteen hundred and one.

* * * **Military telegraph to Saint Michael.** For the purpose of connecting headquarters, Department of Alaska, at Saint Michael, by military telegraph and cable lines with other military stations in Alaska, four hundred and fifty thousand five hundred and fifty dollars: Provided, That commercial business may be done over these military lines under such conditions as may be deemed, by the Secretary of War, equitable and in the public interests, all receipts from such commercial business shall be accounted for and paid into the Treasury of the United States, and that the sum hereby appropriated shall be immediately available: Provided further, That no telegraph or cable lines owned or operated or controlled by persons not citizens of the United States, or by any foreign corporation or government, shall be established in or permitted to enter Alaska.

Approved, May 26, 1900.

[31 Stat. L. ——.]

AN ACT to extend the coal land laws to the district of Alaska.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That so much of the public land laws of the United States are hereby extended to the district of Alaska as relate to coal lands, namely, sections twenty-three hundred and forty-seven to twenty-three hundred and fifty-two, inclusive, of the Revised Statutes.

Approved, June 6, 1900.

The sections referred to in the above Act are as follows:

Sec. 2347. Entry of coal-lands. Every person above the age of twenty-one years, who is a citizen of the United States, or who has declared his intention to become such, or any association of persons severally qualified as above, shall, upon application to the register of the proper land-office, have the right to enter, by legal subdivisions, any quantity of vacant coal-lands of the United States not otherwise appropriated or reserved by competent authority, not exceeding one hundred and sixty acres to such individual person, or three hundred and twenty acres to such association, upon payment to the receiver of not less than ten dollars per acre for such lands, where the same shall be situated more than fifteen miles from any completed railroad, and not less than twenty dollars per acre for such lands as shall be within fifteen miles of such road. Colorado Coal Co. v. U. S., 123 U. S. 325.

Sec. 2348. Pre-emption of coal-lands. Any person or association of persons severally qualified, as above provided, who have opened and improved, or shall hereafter open and improve, any coal mine or mines upon the public lands, and shall be in actual possession of the same, shall be entitled to a preference-right of entry, under the preceding section, of the mines so opened and improved; Provided, That when any association of not less than four persons, severally qualified as above provided, shall have expended not less than five thousand dollars in working and improving any such mine or mines, such association may enter not exceeding six hundred and forty acres, including such mining improvements.

Sec. 2349. Pre-emption claims of coal-land to be presented within sixty days, etc. All claims under the preceding section must be presented to the register of the proper land-district within sixty days after the date of actual possession and the commencement of improvements on the land, by the filing of a declaratory statement therefor; but when the township plat is not on file at the date of such improvement, filing must be made within sixty days from the receipt of such plat at the district office; and where the improvements shall have been made prior to the expiration of three months from the third day of March, eighteen hundred and seventy-three, sixty days from the expiration of such three months shall be allowed for the filing of a declaratory statement, and no sale under provisions of this section shall be allowed until the expiration of six months from the third day of March, eighteen hundred and seventy-three.

Sec. 2350. Only one entry allowed. The three preceding sections shall be held to authorize only one entry by the same person or association of persons; and no association of persons any member of which shall have taken the benefit of such sections, either as an individual or as a member of any other association, shall enter or hold any other lands under the provisions thereof; and no member of any association which shall have taken the benefit of such sections shall enter or hold any other lands under their provisions; and all persons claiming under section twenty-three hundred and forty-eight shall be required to prove their respective rights and pay for the lands filed upon within one year from the time prescribed for filing their respective claims; and upon failure to file the proper notice, or to pay for the land within the required period, the same shall be subject to entry by any other qualified applicant.

Sec. 2351. Conflicting claims. In case of conflicting claims upon coal-lands where the improvements shall be commenced, after the third day of March, eighteen hundred and seventy-three, priority of possession and improvement, followed by proper filing and continued good faith, shall determine the preference-right to purchase. And also where improvements have already been made prior to the third day of March, eighteen hundred and seventy-three, division of the land claimed may be made by legal subdivisions, to include, as near as may be, the valuable improvements of the respective parties. The Commissioner of the General Land Office is authorized to issue all needful rules and regulations for carrying into effect the provisions of this and the four preceding sections.

Sec. 2352. Rights reserved. Nothing in the five preceding sections shall be construed to destroy or impair any rights which may have attached prior to the third day of March, eighteen hundred and seventy-three, or to authorize the sale of lands valuable for mines of gold, silver, or copper.

[31 Stat. L. ——.]

JOINT RESOLUTION making appropriation for payment of the salaries of certain officers in the district of Alaska for the fiscal year ending June thirtieth, nineteen hundred and one, and for other purposes.

Appropriation for salaries. Resolved by the Senate, etc., That the following sums be, and the same are hereby, appropriated, out of any money in the Treasury not otherwise appropriated, in full compensation for the service of the fiscal year ending June thirtieth, nineteen hundred and one, for the objects hereinafter expressed, namely:

District of Alaska: For governor, five thousand dollars; three judges, five thousand dollars each; three attorneys, three thousand dollars each; three marshals, four thousand dollars each; three clerks, three thousand five hundred dollars each; surveyor-general and ex officio secretary of the district, four thousand dollars; in all, fifty-five thousand five hundred dollars.

Appropriations heretofore made for the payment of salaries of the above-named officials during the next fiscal year to be covered into the Treasury.

Approved, June 6, 1900.

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(The references are to Parts, sections, and pages. The Roman numerals refer to Parts, thus: I, The Penal Code; II, the Code of Criminal Procedure; III, the Political Code; IV, the Code of Civil Procedure; and V, the Civil Code. The figures following are the sections, and those in the right-hand column, the pages.)

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